

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
A. Byron & Sally Ann Collins :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Years 1974 & 1975

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of April, 1981, he served the within notice of Decision by certified mail upon A. Byron & Sally Ann Collins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

A. Byron & Sally Ann Collins  
RD #2  
Canisteo, NY 14823

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
3rd day of April, 1981.

*Connie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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under Article 22 of the Tax Law :  
for the Years 1974 & 197 :  
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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Arnold Petralia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Arnold Petralia  
811 First Federal Plaza  
Rochester, NY 14614

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

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*Carrie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
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A. BYRON COLLINS and SALLY ANN COLLINS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1974 and 1975.	:	

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Petitioners, A. Byron Collins and Sally Ann Collins, RD #2, Canisteo, New York 14823, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the Years 1974 and 1975 (File No. 20011).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 16, 1980 at 9:15 A.M. Petitioners appeared by Arnold Petralia, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

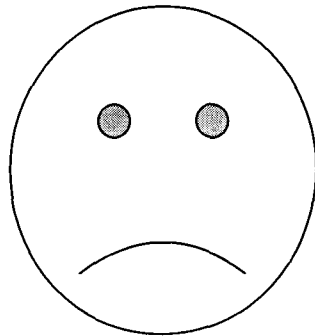
ISSUE

Whether petitioners were engaged in a business activity for profit and thus were entitled to deduct losses incurred in operating a cattle ranch.

FINDINGS OF FACT

1. On June 27, 1977, the Audit Division issued notices of deficiency against petitioners in which farm losses were disallowed pursuant to section 183 of the Internal Revenue Code for the years 1974 and 1975. The deficiencies in tax were \$12,351.86 for 1974 and \$12,852.75 for 1975.

# **CORRECTION FOLLOWS**



STATE OF NEW YORK  
STATE TAX COMMISSION

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Sworn to before me this  
3rd day of April, 1981.

*Carrie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 3, 1981

A. Byron & Sally Ann Collins  
RD #2  
Canistota, NY 14823

Dear Mr. & Mrs. Collins:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Arnold Petralia  
811 First Federal Plaza  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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ISSUE

Whether petitioners were engaged in a business activity for profit and thus were entitled to deduct losses incurred in operating a cattle ranch.

FINDINGS OF FACT

1. On June 27, 1977, the Audit Division issued notices of deficiency against petitioners in which farm losses were disallowed pursuant to section 183 of the Internal Revenue Code for the years 1974 and 1975. The deficiencies in tax were \$12,351.86 for 1974 and \$12,852.75 for 1975.

2. Petitioners timely filed 1974 and 1975 State income tax returns. Losses from farm operations for said years were \$93,036.37 and \$95,005.34 respectively. Their farm, known as ABC Ranch, had been in operation since 1969. Its records of account were maintained on a double entry cash basis by a licensed public accountant.

3. Petitioner Byron Collins spent between ten to fifteen hours per week on the farm in supervision and an additional ten hours per week in maintaining records and keeping current on cattle ranching. He spent extensive time reading journals and books, attending a cattlemen's course and attending seminars. He relied on experts to run his cattle operation, to purchase cattle, to obtain reports concerning feasibility of land use, to assist in the acquisition of equipment and generally to assist in the operation of the farm. He did extensive advertising on behalf of ABC Ranch, and entered cattle in shows and won numerous awards for his cattle. On July 18, 1976, a field day was held at the ABC Ranch on behalf of the New York Junior Hereford Association. On or about February 25, 1976, Byron Collins made twenty-five steers available to the State University of New York at Alfred, New York for a beef cattle seminar. On occasion, he sold bulls at a loss and loaned bulls to other farmers.

4. When Byron Collins entered the beef cattle business in 1969, he understood that it would take between five to eight years to show a profit. One of the major problems in establishing a purebred cattle farm is "selling the people on the right kind of cattle to buy". Expert testimony indicated that in New York the minimum time for a beef cattle ranch to show a profit is eight to ten years, assuming ideal conditions. In 1969, when Byron Collins began to devote substantial resources to the beef cattle business, his reasons

for engaging in the activity were to develop a seed stock breeding herd. During the years 1969 through 1976, he was attempting to establish a business reputation in the beef cattle industry as a breeder of superior breeding stock for New York cattlemen. In 1973, the cattle industry experienced a severe downturn due to traditional market forces known as the beef cycle. Due to the fact that there were too many cattle available for slaughter, cattlemen were not expanding their herds and consequently were not buying prime breeding stock from breeding stock producers such as the ABC Ranch. Rather than sell the ABC Ranch prime breeding stock at slaughterhouse prices, a business decision was made to retain the breeding stock and expand the herd to wait for the swing in the beef cycle towards an upward trend in price. The low prices resulting from the beef cycle lasted until 1977.

5. Byron Collins consulted with Lochrane A. Gary between the years 1969 and 1979 on a regular basis including phone calls approximately six to eight times per year for an hour each time and personal visits by Mr. Gary to the ABC Ranch three or four times during each year. Lochrane A. Gary's background included thirty years of experience in the beef cattle industry including thirteen years of experience at a professional level. In addition, he possessed an M.S. degree in animal science and approximately thirty-five hours of post graduate work in reproductive physiology, genetics, animal physiology and ranch management. He has written approximately forty articles relating to animal science and animal management. Byron Collins purchased his foundation herd in large part in Montana. At the time he purchased his herd, it was the opinion of experts in the field that hereford cattle could be transported between different geographical locations in the country with no adverse impact upon the cattle. Recent scientific evidence indicates that animals transported

from Montana to New York do not adapt very quickly and oftentimes fail to breed and perform as they did in their original environment. In an effort to make the ABC Ranch more productive, Lochrane A. Gary and his wife, Karyn also an expert in animal science, assisted Byron Collins in culling unproductive animals in Byron Collins' herd. Mr. and Mrs. Gary produced a land use and capability study for the ABC Ranch in 1977. In the opinion of Mr. Gary, Byron Collins kept proper records for a beef cattle ranch. Mr. Gary, who has been on "scores" of so-called hobby farms, described Byron Collins' ranch as not possessing any of the characteristics of a hobby farm. In Mr. Gary's opinion, Byron Collins had followed the right steps to establish a profitable purebred cattle farm and was doing everything he could to operate the ABC Ranch at a profit.

6. During the years 1970 through 1977, Byron Collins was in contact with an individual in the beef cattle industry named Ed Brown, whose background in the beef cattle business consists of thirty years experience in every position from barn sweeper to farm manager. Ed Brown currently owns his own farm with approximately one hundred head of cattle. In 1971, Mr. Brown assisted Byron Collins in purchasing twenty of the best cows on the Blakely Ranch, Charlestown, West Virginia. At the time Ed Brown visited the ABC Ranch in 1971, he found that Byron Collins was operating the ranch in a practical manner. After 1971, Byron Collins and Mr. Brown traveled to the western United States for the purpose of selecting breeding stock for the ABC Ranch. During this time, he asked for and received expert advice from Mr. Brown on making selections of cattle. In the years which followed the trips out west, they kept in contact over the phone and through personal visits. Their conversations were about the cattle business. During this time, in the words of Ed Brown, Byron Collins

"picked his brains" concerning the cattle business. In 1974 and 1975, Byron Collins attempted to get Mr. Brown to work for him on the ABC Ranch and combine their two operations. Mr. Brown recommended an employee to Byron Collins whom Byron Collins ultimately employed. In the opinion of Ed Brown, the methods employed by Byron Collins to establish his seed stock herd, i.e. showing the cattle in fairs, was the "number one way" to go in establishing the name of the herd. Also, in the opinion of Ed Brown, Byron Collins was attempting to run the ABC Ranch as a profitable business and he would not have operated the ranch differently in any major way. During the entire period from 1969 through to the present, Byron Collins has maintained proper records of the crops grown on the ABC Ranch with which to feed the beef cattle, and proper records for a purebred hereford cattle ranch.

7. Byron Collins has invested approximately \$357,000.00 in materials, capital, equipment, land, and buildings to date. It is anticipated that in 1980 the ABC Ranch will show an economic profit, exclusive of depreciation. The present fair market value of the land and buildings of the ABC Ranch is approximately \$718,000.00.

8. During the course of the audit conducted by New York State, approximately four and one-half hours were spent during one day at the office of the accountant for ABC Ranch. Following the tax examiner's audit, his initial conclusion was that the return should be accepted as filed but he was overruled by his supervisor. An audit was conducted by the Internal Revenue Service for the taxable year 1973 in which the issue was raised as to whether Byron Collins was operating the ABC Ranch with an intent to make a profit. On November 14, 1975, the Internal Revenue Service issued a no change letter to Byron and Sally Collins indicating that the return was accepted as filed. During the course of the

audit by the Internal Revenue Service, the auditor spent approximately three days on the audit, a portion of which time was spent on the ABC Ranch looking at the three farms which comprised the ABC Ranch.

CONCLUSIONS OF LAW

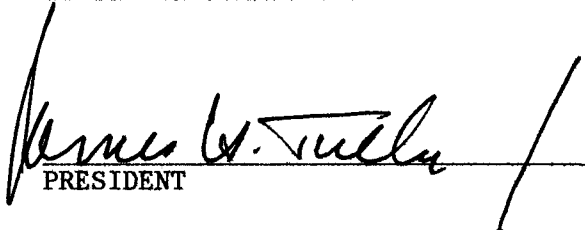
A. That the petitioners, A. Byron Collins and Sally Ann Collins, were engaged in the business of purebred cattle ranching with an intent to make a profit during 1974 and 1975; therefore, the losses experienced were deductible during said years without regard to the limitations set forth in section 183 of the Internal Revenue Code.

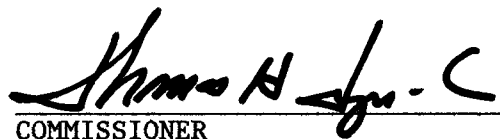
B. That the petition of A. Byron Collins and Sally Ann Collins is granted and the Notice of Deficiency issued June 27, 1977 is cancelled.

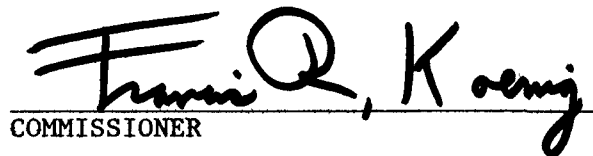
DATED: Albany, New York

APR 03 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER