

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Emanuel Shapiro :

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 Year :
1975. :

State of New York
County of Albany

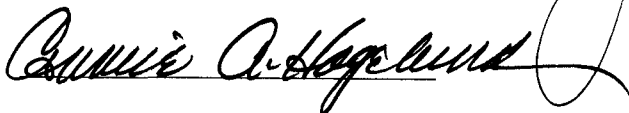
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon Emanuel Shapiro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

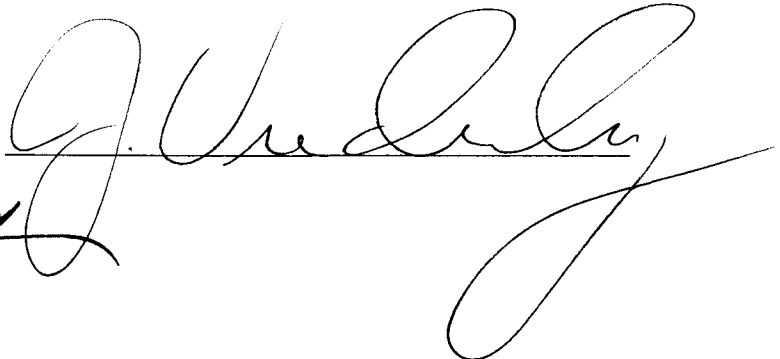
Emanuel Shapiro
123 S. Cole Ave.
Spring Valley, NY 10977

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
4th day of June, 1982.





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

June 4, 1982

Emanuel Shapiro
123 S. Cole Ave.
Spring Valley, NY 10977

Dear Mr. Shapiro:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMANUEL SHAPIRO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Emanuel Shapiro, 123 South Cole Avenue, Spring Valley, New York 10977, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File No. 27475).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 9, 1981 at 2:45 P.M. Petitioner, Emanuel Shapiro, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner is entitled to claim a \$1,000.00 long term capital loss deduction on his New York State return where no such deduction was claimed on his U.S. Individual Income Tax Return.

FINDINGS OF FACT

1. Petitioner, Emanuel Shapiro, and his wife, Rhoda Shapiro, timely filed separate New York State Income Tax Resident Returns for the year 1975 on combined Form IT-208. On said return petitioner claimed a \$1,000.00 long term capital loss deduction generated from an \$11,055.00 long term capital loss carryover from the year 1974.

2. On April 11, 1979 the Audit Division issued a Notice of Deficiency to petitioner asserting that for the year 1975 additional personal income tax of \$82.00 was due together with interest. The Notice of Deficiency was based on an explanatory Statement of Audit Changes, dated May 9, 1978, wherein petitioner's claimed \$1,000.00 long term capital loss deduction was disallowed since he had not claimed a corresponding \$1,000.00 long term capital loss deduction on his 1975 U.S. Individual Income Tax Return. The additional tax and interest due totaling \$102.82 was paid by petitioner under protest via personal check dated June 28, 1979.

3. In 1968 petitioner was president and sole stockholder of S&S Brighton, Inc. (hereinafter "S&S"), a New York corporation engaged in the operation of a cafeteria/restaurant in Bronx, New York. S&S experienced financial problems and was forced to close its doors sometime in 1968. As the result of its financial problems, S&S was unable to meet its obligation to the Internal Revenue Service for Federal income tax withheld from employee wages and Federal Insurance Contributions Act taxes for the periods ended 6/30/68, 9/30/68 and 12/31/68. Petitioner, as the chief executive officer of S&S, was held personally liable for payment of said past due Federal taxes.

4. Due to the financial collapse of S&S, petitioner's stock in said corporation was deemed worthless and a \$16,942.00 long term capital loss was realized on said stock in 1969. Pursuant to the applicable provisions of the Internal Revenue Code, petitioner was entitled to deduct a maximum long term capital loss of \$1,000.00 per year with the balance being carried forward to each succeeding year until the entire loss was fully absorbed. From the years 1969 through 1974 petitioner deducted long term capital losses totaling \$5,887.00,

leaving a balance available to be carried forward to 1975 of \$11,055.00 (\$16,942.00-\$5,887.00).

5. Although personally liable for payment of the past due Federal taxes of S&S, petitioner did not have sufficient funds to meet this obligation. Accordingly, he submitted an offer in compromise to the Federal authorities in an effort to rid himself of said liability. One of the conditions of the offer, contained in a collateral agreement dated April 1, 1975, provided that:

It is understood and agreed that for the purpose of computing Federal income taxes of the taxpayers for all taxable years beginning after 12/31/74...[T]hat any net capital losses sustained for years prior to 1976 shall not be claimed as carryovers or carrybacks under the provisions of section 1212 of the Internal Revenue Code.

6. Via letter dated July 17, 1975 the Internal Revenue Service advised petitioner that his offer in compromise had been accepted. In accordance with the conditions set forth in the offer, petitioner did not carryforward the remaining \$11,055.00 long term capital loss from 1974 to his 1975 Federal income tax return.

7. The New York State withholding tax obligation of S&S was fully paid, either from corporate funds or petitioner's personal funds. Petitioner contends that for New York State income tax purposes he is entitled to carryforward the \$11,055.00 long term capital loss from 1974 to 1975 and deduct the maximum \$1,000.00 loss allowable by law since the offer in compromise which prohibited him from taking the deduction on his Federal return applied solely to past due Federal taxes and not New York State taxes.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law defines New York adjusted gross income of a resident individual as "...his federal adjusted gross income as

defined in the laws of the United States for the taxable year, with the modifications specified in this section". That the modifications contained in subsection (c) of section 612 of the Tax Law decreasing Federal adjusted gross income do not provide for the deduction of a \$1,000.00 long term capital loss for State purposes where no such deduction was claimed for Federal purposes.

B. That no capital loss carryovers were used in computing petitioner's Federal adjusted gross income for the year 1975 and petitioner is therefore not entitled to deduct any capital loss carryovers on his 1975 New York State income tax return (Matter of Gurney v. Tully, 51 N.Y. 2d 818, revg. 67 A.D. 2d 303).

C. That the petition of Emanuel Shapiro is denied and the Notice of Deficiency dated April 11, 1979 is sustained. That petitioner is entitled to a credit of \$102.82 for the payment made on June 28, 1979, resulting in a zero balance due.


DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER