

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of William F. Tracy	: : : : : :	: : : : : :
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 1973 - 1975.		

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon William F. Tracy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William F. Tracy
213 West Oak St.
Rome, NY 13440

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
6th day of May, 1983.

David Parchuck

James A. Hargrave

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William F. Tracy :
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 :
1973 - 1975. :

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Emlyn I. Griffith the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

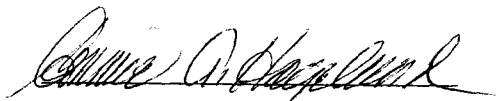
Emlyn I. Griffith
Griffith & Pileckas
225 N. Washington St.
Rome, NY 13440

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.

Sworn to before me this
6th day of May, 1983.

David Parchuck



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

William F. Tracy
213 West Oak St.
Rome, NY 13440

Dear Mr. Tracy:

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
Emlyn I. Griffith
Griffith & Pileckas
225 N. Washington St.
Rome, NY 13440
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
WILLIAM F. TRACY
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1973 through 1975.

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DECISION

Petitioner, William F. Tracy, 213 West Oak Street, Rome, New York 13440, 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 1973 through 1975 (File No. 19225).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York, on March 17, 1982 at 1:15 P.M. Petitioner appeared by Emlyn I. Griffith, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner was engaged in a business activity for profit and thus was entitled to deduct losses incurred in operating a farm.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued a Statement of Audit Changes to petitioner stating: "You may not use losses from an activity not engaged in for profit to offset income from other sources". The Division thereupon disallowed petitioner's claimed farm losses of \$22,178.43 for 1973,

\$18,686.01 for 1974 and \$24,383.74 for 1975. (Other adjustments were also proposed but are not at issue.) Accordingly, for the years in issue, a Notice of Deficiency was issued in the amount of \$12,038.59, plus interest of \$1,845.21, for a total of \$13,883.80.

2. Petitioner purchased a farm of 98 acres in the Hamlet of Lee Center in 1960 and a farm of 460 acres in the Town of Lee in 1965 for \$18,000.00 and \$30,000.00, respectively. Prior to medical school, petitioner, now a general family physician, worked on farms in Oneida County. When the Tyler farm (Town of Lee property) was purchased, the farm house was rebuilt into two rental units. Prior to the years at issue, the land was rented by an adjacent farmer. Petitioner attempted various farming activities to make the farms profitable. When raising dairy heifers or beef cattle became unprofitable, cash crops, such as corn, barley, oats and hay were raised. He hired a farm manager to oversee the operation. Small tractors were used on the farms which were surrounded by barbed wire fence. Petitioner cited extenuating circumstances which accounted for losses during the years at issue, such as in 1973, the land which had lain fallow and unused had to be restored to production by plowing, fertilizing and liming. In 1974, inflationary spirals in operating expenses limited profits; in 1975, the lifting of the embargo on Argentina beef depressed the local beef market; and in all the years in issue, unusual weather conditions prevented normal yields from hay and corn crops. Petitioner had reduced losses between the years in issue and subsequent years and moved closer to profitable operations. Petitioner claimed that losses in two of the years were caused by the destruction of two barns by weather conditions, i.e., wind storms and other severe weather conditions.

3. The farms appreciated greatly in value. It is, according to petitioner, a common business practice to invest money and accept short-term losses in order to increase long-term profitability.

4. The Internal Revenue Service corrected petitioner's personal casualty loss deduction for 1974 because he failed to reduce said loss by the \$100.00 limitation. There is nothing in the record to show that petitioner's federal income tax returns were audited for the years at issue or that the farm losses were questioned by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That the petitioner was engaged in the business of farming with an intent to make a profit during the years in issue; therefore, the losses experienced were deductible during said years without regard to the limitations set forth in section 183 of the Internal Revenue Code. (Matter of A. Byron Collins and Sally Ann Collins, State Tax Commission, April 3, 1981.)

B. That the petition of William F. Tracy is granted and the Notice of Deficiency issued March 28, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

Rudolph A. W. Can
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. J. J.
COMMISSIONER