

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ronald Hopkins :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

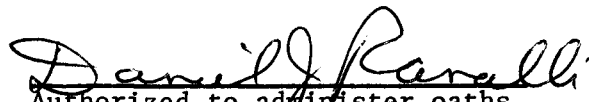
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Ronald Hopkins the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

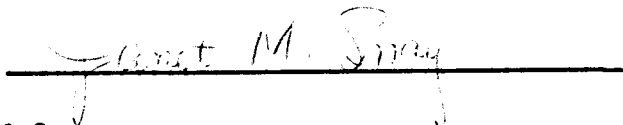
Ronald Hopkins
P.O. Box 97
Yorkshire, NY 14173

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
19th day of June, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ronald Hopkins :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income
Tax under Article(s) 22 of the Tax Law :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he served the within notice of Decision by certified mail upon Allan P. McCarthy, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allan P. McCarthy
Pioneer Professional Bldg., P.O. Box 26
Arcade, NY 14009

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
19th day of June, 1986.

Daniel J. Ravalli
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

June 19, 1986

Ronald Hopkins
P.O. Box 97
Yorkshire, NY 14173

Dear Mr. Hopkins:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Allan P. McCarthy
Pioneer Professional Bldg., P.O. Box 26
Arcade, NY 14009

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RONALD A. HOPKINS : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1979 and 1980. :

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, Part V, State Office Building, 65 Court Street, Buffalo, New York on September 11, 1985 at 2:45 P.M. Petitioner appeared by Allan P. McCarty, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

Whether the loss sustained by petitioner was a personal loss and therefore not deductible under section 165 of the Internal Revenue Code.

1. Petitioner, Ronald A. Hopkins, filed New York State Resident Income Tax returns for 1979 and 1980 on which he deducted a \$3,000.00 capital loss for 1979 and a \$3,000.00 capital loss carryover for 1980. Petitioner's Federal Schedule D for 1979 described the loss property as "Home-Nunda, NY" and stated that it was acquired in 1975 and sold in 1979. The selling price was shown as \$39,000.00 with a cost or other basis of \$55,731.45 for a loss of \$16,731.45.

2. In a Statement of Audit Changes dated December 15, 1982, petitioner was informed by the Audit Division that the capital loss and the capital loss carryover were disallowed on the basis that "you failed to establish that the loss on the sale of your house was a deductible loss" (the Statement of Audit Changes also reduced allowable medical and dental expenses by \$90.00 for 1979, however, that disallowance is not at issue).

3. On February 25, 1983, the Audit Division issued a Notice of Deficiency to petitioner for \$520.26 in additional tax for the years 1979 and 1980, plus interest.

4. The loss property was a house and three acres of land located in Nunda, New York. The site was in a desirable recreational area near ski facilities and hunting and fishing areas. It was about a one hour drive from Rochester and a two hour drive from Buffalo. There was a stream on the property. The house was of contemporary design with picture windows and a large deck. It had central heating.

5. In 1979 petitioner owned two business: R. A. Hopkins, Inc., of Nunda, New York, and DeMuth Marzolf, Inc. of Darien Center, New York, about sixty miles northwest of Nunda. Both firms were fuel oil and gasoline distributorships.

6. Because of business reversals, petitioner found himself in financial difficulties in 1979. He had guaranteed certain corporate obligations and was required to deed the Nunda land and house to Citizens Central Bank of Arcade, New York in order to satisfy his own liability. This transaction resulted in the loss of \$16,731.45.

7. Petitioner claims that he purchased the Nunda land with the intention of developing it with three vacation homes which were to be sold or rented, and

that the loss sustained was a business loss. The one house on the land was about 90 percent complete when the property was deeded to Citizens Central Bank.

8. During 1979, petitioner resided, as he does now, in Yorkshire, New York, about thirty miles west of Nunda. He was able to retain his Yorkshire home despite his financial problems.

9. Petitioner does not ski, fish or hunt.

CONCLUSIONS OF LAW

A. That Section 165 of the Internal Revenue Code, as in effect during the years at issue, provided, in pertinent part:

"Sec. 165 (a) GENERAL RULE. -- There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

* * *

(c) LIMITATION ON LOSSES OF INDIVIDUALS. -- In the case of an individual, the deduction under subsection (a) shall be limited to --

- (1) losses incurred in a trade or business;
- (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and
- (3) losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft...."

B. That petitioner did not sustain his burden of proof imposed under section 689(e) of the Tax Law to show that the loss incurred on the deeding of the Nunda real estate was a loss incurred in a trade or business or a loss incurred in a transaction entered into for profit (no casualty or theft loss was claimed). Accordingly, no deduction is allowable.

C. That the petition of Ronald A. Hopkins is denied and the Notice of Deficiency issued on February 25, 1983 is sustained.

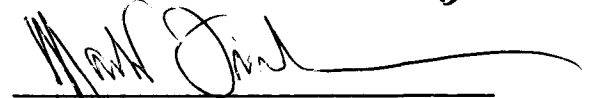
DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER