

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Santo C. & Linda Pisani :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1981. :
:

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Santo C. & Linda Pisani, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Santo C. & Linda Pisani
3989 Elmcrest Rd.
Liverpool, NY 13088

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
28th day of January, 1986.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Santo C. & Linda Pisani	:	
		AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1981.	:	

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he served the within notice of Decision by certified mail upon Kenneth Makowski, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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.

David Parslusk

Bernie A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Santo C. & Linda Pisani
3989 Elmcrest Rd.
Liverpool, NY 13088

Dear Mr. & Mrs. Pisani:

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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Kenneth Makowski
Shiroki Associates
499 S. Warren St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SANTO C. AND LINDA PISANI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

Petitioners, Santo C. and Linda Pisani, 3989 Elmcrest Road, Liverpool, New York 13088, 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 1981 (File No. 47842).

A hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 8, 1985 at 3:00 P.M., with all briefs and documents to be submitted by July 31, 1985. Petitioner appeared by Shiroki Associates (Kenneth Makowski, P.A.). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed a bad debt deduction claimed by Santo C. Pisani on the ground that the amount claimed represented a contribution of capital.

FINDINGS OF FACT

1. Santo C. Pisani filed a New York State Resident Income Tax Return for 1981. On this return, he reported a short-term capital loss of \$15,559.66.
2. On June 22, 1983, the Audit Division issued a Notice of Deficiency to Santo C. and Linda Pisani asserting a deficiency of personal income tax in the

amount of \$1,036.30, plus interest of \$176.10, for a total amount due of \$1,212.40. The Statement of Audit Adjustment, which was issued March 11, 1983, stated that the loss of \$15,559.66 was disallowed since the amount involved was a contribution of capital to Little Gem Diner, Inc. and not a bad debt loss as claimed. At the hearing, the Audit Division requested that Linda Pisani's name be removed from the Notice of Deficiency since the tax return which led to the asserted deficiency was filed by Santo C. Pisani only.

3. Little Gem Diner, Inc. ("Little Gem") operated a diner in Syracuse, New York. In 1981, the stockholders and officers of Little Gem were Louis Adornato, who was the president; Santo Pisani, who was the secretary; and Frank Winters, who was the treasurer.

4. During the period in issue, Mr. Pisani, Mr. Adornato and Mr. Winters were stockholders in a corporation which operated a truck stop and motel complex. On or about April 30, 1981, each of the foregoing individuals drew a bonus of \$15,559.00 from this corporation and deposited the funds into their personal accounts. They then withdrew these funds and deposited them into the account of Little Gem.

5. The bonus funds were provided to Little Gem in order to enable it to satisfy its creditors. The principals wanted the credit rating of Little Gem to remain sound because they planned to continue the operation of the diner as partners.

6. On or about June 30, 1981, Little Gem was dissolved as a corporate entity and the same individuals who were stockholders of Little Gem continued the operation of the diner as a partnership.

7. Little Gem and the successor partnership had the same creditors.

8. For the fiscal year ended June 30, 1979, Little Gem had taxable income, before a net operating loss, of \$11,613.00. For the fiscal years ended June 30, 1980 and June 30, 1981, Little Gem reported on its federal returns losses of \$11,830.94 and \$10,042.67, respectively. During each of the fiscal years ended June 30, 1978 through June 30, 1980, Little Gem's capital stock was valued at \$4,000.00. It reported a retained earnings deficit during the same three year period.

9. In 1981, Little Gem had total assets of \$42,298.49 and total liabilities of \$81,957.25 resulting in a retained earnings deficit of \$43,658.76.

10. No evidence was presented as to whether Little Gem executed a note promising to repay the funds that were transferred to it in 1981; whether Little Gem ever paid interest on the money that was transferred to it; or whether there were fixed repayment dates for the funds that were transferred to Little Gem.

CONCLUSIONS OF LAW

A. That, during the period in issue, Treas Reg. §1.166-1(c) provided, in part:

"Bona fide debt required. Only a bona fide debt qualifies for purposes of section 166. A bona fide debt is a debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money. A gift or contribution to capital shall not be considered a debt for purposes of section 166."

B. That petitioner Santo C. Pisani has failed to sustain his burden of proof by establishing that there existed a bona fide debtor-creditor relationship between himself and Little Gem based upon an obligation to pay a fixed or determinable sum of money (Treas. Reg. §1.166-1[c]; Tax Law §689[e]). Indeed, in view of the poor financial situation of Little Gem, it is questionable whether petitioner expected a return of the funds provided. Accordingly, the Audit

Division properly determined that petitioner was not entitled to claim the bad debt deduction at issue.

C. That, in accordance with Finding of Fact "2", the Notice of Deficiency is cancelled insofar as it applies to petitioner Linda Pisani and the petition is, in all other respects, denied and the Notice of Deficiency is otherwise sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986

Rodriguez
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Jurek
COMMISSIONER