

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARK J. FURST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1971.:
~~XXXXXX~~

State of New York
County of Albany

Carmen Mottolese , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of September , 1976 , she served the within
Notice of Decision by (certified) mail upon Mark J. Furst
~~(XXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Mark J. Furst
100 Hepburn Road
Clifton, New Jersey 07012
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

30th day of September , 1976.

Janet Mack

Carmen Mottolese

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

MARK J. ^{of}FURST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(s)~~ 22 of the :
Tax Law for the Year ~~(s)~~ ~~1971~~ ~~1971~~ 1971:

State of New York
County of Albany

Carmen Mottolese, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Herbert S. Furst, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herbert S. Furst, C.P.A.
1776 Broadway
New York, New York 10019

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

30th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 30, 1976

TELEPHONE: (518) **457-3850**

Mr. Mark J. Furst
100 Hepburn Road
Clifton, New Jersey 07012

Dear Mr. Furst:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(§) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARK J. FURST	:	DECISION
for a Redetermination of a Deficiency or	:	
for a Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year 1971.	:	

Petitioner, Mark J. Furst, 100 Hepburn Road, Clifton, New Jersey 07012, filed a petition for redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for 1971. (File No. 1-89132152). A small claims hearing was held before Joseph Marcus, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, 65th Floor, on May 12, 1976, at 2:45 P.M. Petitioner was represented by Herbert S. Furst, C.P.A. of 1776 Broadway, New York City. The Income Tax Bureau was represented by Peter Crotty, Esq., (Louis Senft, Esq., of counsel).

ISSUE

The issue in this case is whether a year-end loss of an electing small business corporation for Federal income tax purposes is deductible on a nonresident return when such loss occurs in the taxpayer's period of nonresidency.

FINDINGS OF FACT

Petitioner, Mark J. Furst, was a resident of the State of New York for the period January 1, 1971 through September 30, 1971.

Petitioner resided in New Jersey on October 1, 1971 through December 31, 1971. Petitioner, Mark J. Furst, was a shareholder in a corporation known as Furn-A-Kit, Inc., an electing small business corporation for Federal income tax purposes.

Both the petitioner and the corporation were on calendar year for tax purposes.

Petitioner filed a New York State combined income tax return for the period January 1, 1971 through September 30, 1971, (IT-208) jointly with his wife, Leah Furst, on which he deducted the sum of \$14,335.00 from his total income. This sum represented his distributive share of the loss sustained by Furn-A-Kit, Inc. for the year 1971 and was prorated for the nine-month period when petitioner was a resident of the State of New York.

CONCLUSIONS OF LAW

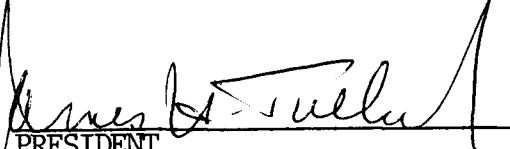
The disallowance of the prorated loss deducted by the petitioner is sustained under section 632(b)4(B) of the New York State Income Tax Law and section 148.6 of the Personal Income Tax Regulations.

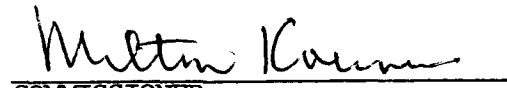
Section 632(b)4(B) provides that: "For a non-resident individual who is a shareholder of a corporation which is an electing small business corporation for Federal Income Tax purposes-(B) ... A net operating loss of such corporation shall not constitute a loss or deduction derived from or connected with New York sources." Further section 148.6 of the Personal Income Tax Regulations precludes the deduction of a loss which occurs in the taxpayer's period of nonresidency, attributive to his status as a shareholder of an electing small business corporation.

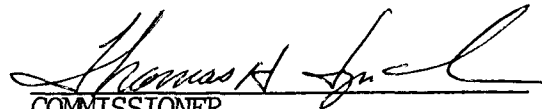
The petition of Mark J. Furst is denied and the Notice of Deficiency is sustained together with such interest as may be lawfully owing.

DATED: Albany, New York
September 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER