

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RAWLEY D. MC COY

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)~~ ~~or~~ ~~Period(s)~~ 1970.:
:

State of New York
County of Albany

Catherine Steele, 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 10th day of November, 1976, she served the within
Notice of Decision by (certified) mail upon Rawley D. McCoy

~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Rawley D. McCoy
10 The Byway
Bronxville, New York 10708

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)~~
~~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

10th day of November, 1976

Janet Mack

Catherine Steele

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAWLEY D. MC COY

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For a Redetermination of a Deficiency or :
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of Personal Income :
Taxes under Article ~~(x)~~ 22 of the :
Tax Law for the Year ~~(x) or Period(s)~~ 1970.:

State of New York
County of Albany

Catherine Steele, 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 10th day of November, 1976, she served the within
Notice of Decision by (certified) mail upon Peter K. Bertine, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Peter K. Bertine, Esq.
Bertine, Hufnagel & Headley
44 Pondfield Road
Bronxville, New York 10708

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

10th day of November, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 10, 1976

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

Mr. Rawley D. McCoy
10 The Byway
Bronxville, New York 10708

Dear Mr. McCoy:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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
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	:	
RAWLEY D. MC COY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law for the Year 1970.	:	

Petitioner, Rawley D. McCoy, residing at 10 The Byway, Bronxville, New York 10708, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 0-66570196). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1976 at 10:45 A.M. Petitioner appeared by Peter K. Bertine, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Did a loan from an employee to his employer, which subsequently resulted in a bad debt, constitute a business or non-business bad debt?

FINDINGS OF FACT

1. Petitioner, Rawley D. McCoy, filed an IT-201 New York State income tax resident return for 1970.

2. On December 30, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner with the explanation that a bad debt deduction was determined to be a non-business bad debt and must be treated as a short term capital loss limited to \$1,000.00. The Income Tax Bureau accordingly issued a Notice of Deficiency on October 29, 1973 in the amount of \$1,215.70.

3. Petitioner, Rawley D. McCoy, entered into an agreement with RC 95 Inc. effective June 1, 1967. The terms of this agreement were, in part that, RC 95 Inc. would employ petitioner, Rawley D. McCoy, as vice-president, at an annual salary of \$37,500.00. In return he would make available to the corporation his technical and engineering knowledge and perform duties fixed by the Board of Directors. The petitioner would purchase 10% of the authorized common stock in RC 95 Inc. for \$1,000.00. The petitioner would lend to RC 95 Inc. \$24,000.00, the repayment of which would be made pursuant to the terms of such agreement.

4. Petitioner, Rawley D. McCoy, received a promissory note from RC 95 Inc. dated June 1, 1967 in the sum of \$24,000.00 plus interest at 8% per annum. The note was signed by Karl Birken, President of RC 95 Inc.

5. Petitioner, Rawley D. McCoy, was employed by RC 95 Inc. from June 1, 1967 through the latter part of 1970.

6. Petitioner, Rawley D. McCoy, did not receive any repayment in satisfaction of the promissory note.

7. The property of RC 95 Inc. was levied on and sold at a sheriff's sale on December 1, 1970.

CONCLUSIONS OF LAW

A. That the loan from petitioner, Rawley D. McCoy, to his employer, which subsequently became worthless, constituted a non-business bad debt within the meaning and intent of I.R.C. section 166 and the implementing Regulation 1.166-5.

Regulation 1.166-5(b) defines: "a non-business bad debt as any debt other than - "(2) A debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business. For the purposes of subparagraph (2) the character of the debt is to be determined by the relation which the loss resulting from the debts becoming worthless bears to trade or business of the taxpayer. If that relation is a proximate one in the conduct of the trade or business in which the taxpayer is engaged at the time the debt becomes worthless the debt comes within the exception provided by that subparagraph."

The Supreme Court has ruled that the "proximate" relationship between a bad debt and a taxpayer's business that is necessary to qualify the loss as a business bad debt exists only where it is shown that the "dominant" motivation for the loan which gave rise to the debt was attributable to the taxpayer's business *United States v Generes*, 405 U.S. 93 (1972).


B. That dominant motivation was not present, since at the point in time when the petitioner, Rawley D. McCoy, decided to enter into the agreement, which set forth the terms of employment, the loan provisions and the capital stock purchase, he was not yet an employee of RC 95 Inc.

C. That the petition of Rawley D. McCoy is denied and the Notice of Deficiency issued October 29, 1973 is sustained.

DATED: Albany, New York
November 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER