

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR L. & IRMA J. CLEMENTS

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) 1973 :

State of New York
County of Albany

Bruce Batchelor , 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 7th day of March , 1977 , she served the within
Notice of Decision by (certified) mail upon Arthur L. & Irma J.

Clements (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Arthur L. Clements
71 Grand Boulevard
Binghamton, New York

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

7th day of March , 1977.

Bruce Batchelor

Janet Bach



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

March 7, 1977

TELEPHONE: (518) 457-1723

Mr. and Mrs. Arthur L. Clements
71 Grand Boulevard
Binghamton, New York

Dear Mr. and Mrs. Clements:

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

Please take further notice that pursuant to
Section(s) **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 TAX COMMISSION

DECISION

II. Did a loan by the petitioner to Mr. Theodore L. Rausch, for the purpose of purchasing a distributorship, result in a capital loss, when the loan was deemed uncollectable and the distributorship was transferred to the petitioner?

FINDINGS OF FACT

1. Petitioners, Arthur L. and Irma J. Clements, filed a joint New York State income tax resident return for 1973. Petitioner, Arthur L. Clements, did not file a partnership return for 1973.

2. On September 26, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners for the taxable year 1973. This statement indicated that a partnership existed between Arthur L. Clements and Barbara Lynn Gary and that the net loss sustained by the partnership was divided equally between the two partners. A bad debt capital loss of \$1,000.00 was also disallowed by the Income Tax Bureau.

3. Petitioner, Arthur L. Clements, entered into an agreement with Barbara Lynn Gary on March 18, 1973, which stipulated that: "We, Lynn Gary & Arthur Clements, agree to share equally (50/50) all income received from MerCon Inc." On March 20, 1973, a second agreement between Arthur Clements and Barbara Lynn Gary was entered into. This agreement stated that:

"Since Lynn Gary received the first \$600.00 of income for her work in the partnership, the next \$600.00 of income from MerCon Inc. will belong to Arthur Clements. Thereafter, all income from MerCon will be shared equally in accord with the agreement of March 18, 1973.

It is further agreed that since Arthur Clements is providing the capital investment and business expenses (and will sustain any possible loss), Lynn Gary is responsible for the work, or at least the major portion of it, to make the partnership a success."

4. On March 9, 1973, petitioner, Arthur L. Clements, lent \$1,000.00 to Theodore L. Rausch. Mr. Clements contends that the purpose of this loan was to enable Mr. Rausch to purchase

a distributorship from MerCon Inc. On March 15, 1973, only six days later, Mr. Rausch transferred the distributorship to petitioner, Arthur L. Clements.

CONCLUSIONS OF LAW

A. That the agreements between petitioner, Arthur L. Clements, and Barbara Lynn Gary dated March 18 and March 20, 1973, constituted partnership agreements, the provisions of which stipulated that income was to be shared equally and that Arthur L. Clements would sustain any losses.

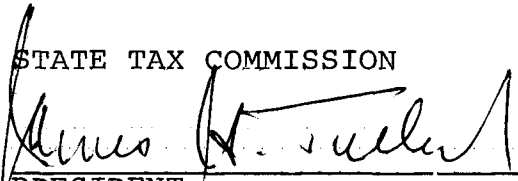
B. That the petitioner, Arthur L. Clements, has sustained a partnership loss of which his distributive share is \$3,055.00.

C. That the petitioner, Arthur L. Clements, sustained no capital loss, since he received a distributorship in exchange for the loan.

D. That the petition of Arthur L. Clements is granted to the extent that the additional personal income tax due is reduced from \$169.58 to \$89.80, together with such interest as may be lawfully owing; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 24, 1976 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER