

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK WURTENBURGER

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 ~~(XXXXXX)~~ 1973 :

State of New York
County of Albany

Marsina Donnini, 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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Frederick Wurtenburger ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Frederick Wurtenburger
98 Sussex Road
New Rochelle, New York 10804
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)~~ ~~xxxxxx~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~xxxxxx~~ petitioner.

Sworn to before me this

22 day of July, 1977

Marsina Donnini

Janet Mark

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK WURTENBURGER

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

Marsina Donnini, 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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon David Kaplan, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: David Kaplan, CPA
150 Great Neck Road
Great Neck, New York 11021
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

22 day of July, 1977.

Marsina Donnini

Janet Buck



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 22, 1977

Mr. Frederick Wurtenburger
98 Sussex Road
New Rochelle, New York 10804

Dear Mr. Wurtenburger:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| FREDERICK WURTENBURGER | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Taxes | : | |
| under Article 22 of the Tax Law for the | : | |
| Year 1973. | : | |

Petitioner, Frederick Wurtenburger, residing at 98 Sussex Road, New Rochelle, New York 10804, has 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 1973. (File No. 13479)

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 21, 1976 at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by David Kaplan, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Whether the bad debt sustained by the petitioner, Frederick Wurtenberger, is considered a business or non-business bad debt.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Frederick Wurtenberger, was president of Elliott Service Company, Inc. for over twenty years. On May 4, 1971, said firm was sold by its parent company, Universal Publication and Distributing Corp. to Good Reading Corporation of Cummings Point, Connecticut. Petitioner had no financial interest in said corporations.

2. Petitioner, as a condition of continuing his employment with Elliott Service Company, Inc., was urged by the chairman and the vice-president of the new parent company, Good Reading Corporation of Cummings Point, to lend \$10,250.00 at the rate of 8% per annum to its real estate affiliate, the Cummings Point Corporation. The said loan became worthless on September 8, 1973.

3. It is petitioner, Frederick Wurtenberger's position that the primary and dominant motive for lending the \$10,250.00 to the Cummings Point Corporation was to protect his employment with Elliott Service Company, Inc., since it was relayed to him by others that failure to lend this money could have led to his being discharged from said firm.

4. Petitioner, Frederick Wurtenberger's "trade or business" is that of being an employee of Elliott Service Company, Inc.

5. Petitioner, Frederick Wurtenberger's dominant and primary motive for making the loan was to protect his employment with said firm; and such debt bears a proximate relationship with his trade or business.

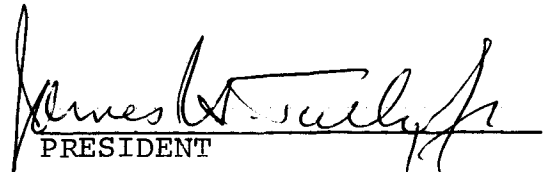
6. Petitioner, Frederick Wurtenberger, was entitled to deduct \$10,250.00 as a business bad debt for the year 1973 in accordance with the meaning and intent of section 166(a)(1) of the Internal Revenue Code.

7. The remaining amount of adjustment to miscellaneous deductions of \$20.25 is too small to warrant assessment.


8. The petition of Frederick Wurtenberger is sustained and the Notice of Deficiency dated March 4, 1975 in the amount of \$1,413.83 is cancelled.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER