

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Anthony P. & Jane M. Rizzuto :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1970. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of February, 1980, he served the within notice of Decision by certified mail upon Anthony P. & Jane M. Rizzuto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

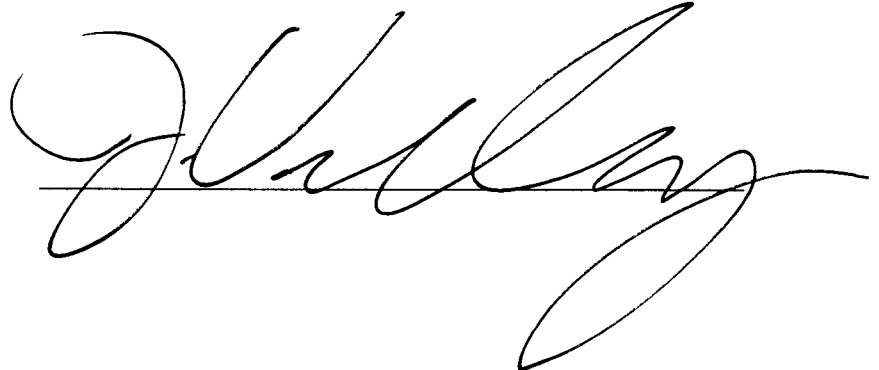
Anthony P. & Jane M. Rizzuto
473 12th St.
Cresskill, NJ

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
15th day of February, 1980.

Jeanne Krapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony P. & Jane M. Rizzuto :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of February, 1980, he served the within notice of Decision by certified mail upon Richard H. Powers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

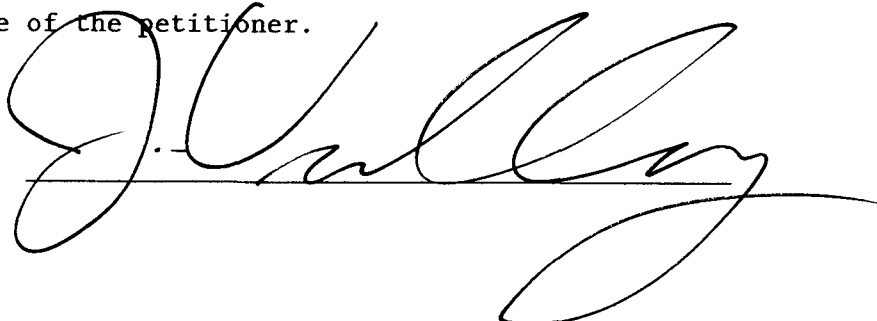
Mr. Richard H. Powers
224 Beach 138th St.
Belle Harbor 94,, NY

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
15th day of February, 1980.

Joanne Krapp



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

February 15, 1980

Anthony P. & Jane M. Rizzuto
473 12th St.
Cresskill, NJ

Dear Mr. & Mrs. Rizzuto:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard H. Powers
224 Beach 138th St.
Belle Harbor 94,, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ANTHONY P. RIZZUTO and JANE M. RIZZUTO : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970.

Petitioners, Anthony P. Rizzuto and Jane M. Rizzuto, residing at 473 12th Street, Cresskill, New Jersey 07626, 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 1970 (File No. 13382).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1976 at 9:15 A.M. Petitioners appeared by Richard H. Powers, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether a loss on worthless securities is an ordinary loss and, if so, whether it is attributable to New York sources on a New York State income tax nonresident return for the year 1970.

FINDINGS OF FACT

1. Petitioners, Anthony P. Rizzuto and Jane M. Rizzuto, filed a joint New York State income tax nonresident return for the year 1970, on which an ordinary loss of \$30,542.57 was claimed as being attributable to New York sources.

2. The Income Tax Bureau issued a Notice of Deficiency against petitioners on February 25, 1974, on the grounds that the loss claimed was not a loss attributable to the disposition of intangible personal property employed by petitioner Anthony P. Rizzuto in a business, trade or profession carried on in New York State.

3. Anthony P. Rizzuto was hired by the brokerage firm of Hayden Stone and Company in 1924. Due to the firm's need for additional capital, he was requested to purchase a one-half of one percent interest in the partnership of Hayden Stone and Company for \$10,000.00. On that initial purchase on August 1, 1960, petitioner became a general partner with the understanding that he would be expected to purchase an additional one-half of one percent in the near future.

4. Although Anthony P. Rizzuto could not financially afford to make such an investment, or to commit himself to an additional future investment, he borrowed money to do so in order to protect his employment relationship with Hayden Stone and Company.

5. On January 2, 1962, the firm was incorporated and Mr. Rizzuto's partnership interest was transferred to the corporation. Stock of the corporation was issued to him in lieu of such interest.

6. The constitution and rules of New York Stock Exchange limited the corporation's ability to obtain capital from outside investors and restricted its capital structure, the terms and ownership of its shares and the participation of management in the capital. In addition, the constitution and rules established minimum net capital requirements, limited the ratio of debt to net capital, required that executives own a specified percentage of capital and defined a minimum percentage of capital that had to be in the form of capital stock.

7. The corporation also established its own policy regarding the relationship between the position which an executive held and the amount of stock he was expected to own in the corporation.

8. In order to maintain and protect his employment and executive status, petitioner was required to purchase additional shares of corporate stock or to contribute to subordinated capital, pursuant to corporate policy and the New York Stock Exchange requirements.

9. As the corporation grew, its capital requirements increased and the demands on the executives for financial assistance became stronger. During the course of his relationship with the firm, as a partnership and as a corporation, petitioner contributed and/or invested in it for purposes of protecting and preserving his income as an executive employee of the firm.

10. In September of 1970, Hayden Stone and Company was unable to meet its capital requirements; therefore, its assets, along with its liabilities, were assumed by another brokerage firm. At that time petitioner's investment became worthless and he suffered a \$30,542.57 loss.

11. Petitioners, Anthony P. Rizzuto and Jane M. Rizzuto deducted the worthless investment of \$30,542.57 as an ordinary loss on their Federal income tax return for the year 1970. As a result, the Internal Revenue Service audited and questioned the deductibility of the worthless investment as an ordinary loss. On May 21, 1975, petitioners were notified that their return was accepted as filed for the year 1970.

CONCLUSIONS OF LAW

A. That petitioner Anthony P. Rizzuto acquired stock from Hayden Stone and Company with a business and not an investment motive, and that he retained this motive until the stock became worthless. Accordingly, petitioner is entitled to an ordinary loss in accordance with the meaning and intent of Section 165(a) of the Internal Revenue Code.

B. That the ordinary loss of \$30,542.57 is deductible as an item of loss derived from or connected with New York sources in accordance with the meaning and intent of Section 632 of the Tax Law.

C. That the petition of Anthony P. Rizzuto and Jane M. Rizzuto is granted and the Notice of Deficiency issued February 25, 1974 is cancelled.

DATED: Albany, New York

FEB 15 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER