

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**GORDON P. AND JACQUIE S. RALPH**  
6642 N. Atwhal Drive  
Glendale, WI 53209,

**DOCKET NOS. 03-I-248**  
**and 03-I-249**

Petitioners,

vs.

**DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE**  
P.O. Box 8907  
Madison, WI 53708-8907,

Respondent.

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**JENNIFER E. NASHOLD, CHAIRPERSON<sup>1</sup>:**

The above-entitled matters came before the Commission for a hearing on June 16, 2004. Petitioner, Gordon P. Ralph, appeared *pro se*<sup>2</sup>. Respondent, Wisconsin Department of Revenue, appeared by Attorney Michael J. Buchanan. All parties filed post-trial briefs.

Having considered the entire record before it, the Commission finds, concludes, and orders as follows:

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<sup>1</sup> The Commissioner authoring this decision is different than the Commissioner who presided over the hearing, who has since resigned. Because this case does not require the Commission to weigh credibility or competing testimony, reassignment of the cases does not pose any fact-finding issues.

<sup>2</sup> At the beginning of the hearing, the Department's attorney indicated that if petitioner Jacquie S. Ralph had no factual information regarding the cases, he would waive her appearance at the end of the hearing. However, the issue was never revisited.

## FINDINGS OF FACT

1. On October 28, 1997, petitioner Gordon P. Ralph entered into a transaction whereby he would make a \$510,000 life insurance premium payment to Lighthouse Capital Insurance Company (Lighthouse Insurance), \$500,000 of which would be invested by Cora Buckowich in high-yield investment programs.<sup>3</sup>

2. To effectuate the transaction, Mr. Ralph wired \$510,000 in two payments to Chase Manhattan Bank in New York, New York, in Lighthouse Insurance's account identified as MeesPierson (Cayman) Ltd.

3. Mr. Ralph provided Lighthouse Insurance with evidence of his insurability for life insurance, which included taking a physical examination with doctors appointed by the insurance company.

4. Mr. Ralph and Lighthouse Insurance entered into a Variable Life Insurance Policy Conditional Premium Receipt Agreement with Limited Interim Death Benefit. Under this agreement, the premium would be held by Lighthouse Insurance in a separate account. The death benefit provided for the payment of the fair market value of Mr. Ralph's account, plus an additional \$10,000, if Mr. Ralph should die after the date of the Premium Receipt Agreement (October 28, 1997) but before underwriting was completed.

5. Mr. Ralph identified William Wylie as his investment manager.

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<sup>3</sup> According to the Court of Appeals for the Seventh Circuit in *United States v. Buckowich*, 243 F.3d 1081, 1082 (7th Cir. 2001), "Cora Buckowich raised money using the lure of spectacular profits. She promised that an investment of \$500,000 placed in overseas 'bank note trading programs' would grow to \$93 million within three months."

6. So that Ms. Buckowich could purchase the investments for Mr. Ralph as he planned after meeting with Ms. Buckowich, Mr. Wylie formed a joint venture with Ms. Buckowich on November 16, 1997, entitled WorldGrowth London Joint Venture. Pursuant to the Joint Venture Agreement, Ms. Buckowich was to invest the \$500,000 in high-yield investment programs. The addendum to the Joint Venture Agreement provided that Ms. Buckowich would hold the investment funds in account #615388436. This account was a checking account at Bank One in Franklin, Wisconsin, under the title of Capital Links, Inc. ("the Capital Links account").

7. In November 1997, \$500,000 was wired to the Capital Links account.

8. A Promissory Note was executed by Ms. Buckowich on November 28, 1997, which stated, in pertinent part:

For value received, and in order that I might earn future commissions on investments, I promise to pay to the order of William Wylie (as investment Manager for the Lighthouse Insurance Company separate account, funder of the Joint Venture which has provided me with power to invest \$500,000 of investable funds), the sum of \$500,000 on January 1, 1998 with interest at 10% per annum, subject only to the following: if I should return the original \$500,000 cashier's check to the Bank One account from which it was drawn on December 3, 1997, and within a day wire \$500,000 to the Meespierson (Cayman) Bank whose coordinates I have, then this note will be deemed paid in full, or if I arrange for the return of at least \$500,000 to said Meespierson account prior to January 1, 1998, this note shall be deemed paid in full.

9. On or about November 17, 1997,<sup>4</sup> Ms. Buckowich purchased a cashier's check payable to herself from Bank One, using the \$500,000 from the Capital Links account. The cashier's check was to be used for investment purposes.

10. On or about December 31, 1997<sup>5</sup>, Ms. Buckowich reported to Bank One that the cashier's check had been lost, and a stop payment order was entered. A \$500,000 credit appears on the bank statement of the Capital Links account, crediting the account on December 31, 1997.

11. Ms. Buckowich began making transactions on the Capital Links account for her own personal use.

12. On January 1, 1998, Mr. Ralph's sum of \$500,000 was still in the Capital Links account. That amount was not depleted until January 2, 1998, when several checks cleared and other amounts were withdrawn.

13. Under date of January 21, 1998, Ms. Buckowich, as representative of Tri-Star Monaco Corporation, wrote to Mr. Ralph informing him of difficulties in releasing the investment monies back to him. In that correspondence, Ms. Buckowich promised to return the original investment of \$500,000 with interest by February 15, 1998.

14. By letter dated February 16, 1998, Mr. Wylie made a formal demand on Ms. Buckowich for return of the \$500,000.

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<sup>4</sup> This date is set forth in the Amended Complaint filed in *Wylie v. Buckowich* (98-CV-4627). See Finding of Fact No. 19.

<sup>5</sup> This date is also set forth in the Amended Complaint referred to in Footnote 4.

15. By letter dated May 17, 1998, Tri-Star Oil Corporation UK, Ltd., wrote to Grant Markus, Mr. Wylie's law partner, informing the law firm that Tri-Star Oil Corporation intended to repay the investment due to Mr. Ralph. That correspondence indicated that the corporation was due to close on a loan during the week of May 18, 1998, and would forward total payment of the original investment to Mr. Ralph within five banking days thereafter.

16. The balance on the Capital Links account as of January 1, 1998 was \$500,085.24. On January 30, 1998, the balance was \$14,443.58.

17. Ms. Buckowich never purchased any investments with Mr. Ralph's \$500,000.

18. Ms. Buckowich was indicted in federal district court for the Eastern District of Wisconsin in November of 1998 for her conversion of Mr. Ralph's \$500,000 to her own use. Ms. Buckowich was sentenced to 40 months' imprisonment for wire fraud, 18 U.S.C. § 1343, and unlawful financial transactions, 18 U.S.C. § 1957. *Buckowich*, 243 F.3d at 1082. As part of her sentence, she was ordered by the Court to pay restitution to Mr. Ralph in the amount of \$500,000.

19. Mr. Wylie sued Ms. Buckowich in Milwaukee County Circuit Court on June 18, 1998, to recover the investment funds, and obtained a judgment against her.

20. On August 28, 1998, Mr. Ralph, Lighthouse Insurance, and Mr. Wylie executed a Receipt Termination and Agreement wherein Mr. Ralph released both Lighthouse Insurance and Mr. Wylie from any claim or liability arising out of the transactions. It was also agreed that Lighthouse Insurance would "not be able to

satisfactorily underwrite the proposed policy on the life of GORDON RALPH." The Agreement further stated that Mr. Ralph "acknowledges receipt of \$500,000 of the separate account assets from WILLIAM WYLIE and agrees that[,] upon receipt of a check for the \$10,000 remaining premium deposit[,] all obligations to him from LIGHTHOUSE have been paid in full and satisfied".<sup>6</sup>

21. Pursuant to a September 3, 1998 agreement between Mr. Ralph and Mr. Wylie, Mr. Wylie assigned to Mr. Ralph his rights, title, and interest in the Promissory Note that had been executed by Ms. Buckowich; his right, title, and interest in the Joint Venture Agreement with Ms. Buckowich; and his right, title, interest, and proceeds of the lawsuit and judgment he obtained against Ms. Buckowich in Milwaukee County Circuit Court.

22. On December 29, 2000, Mr. Ralph filed suit against Bank One for the loss of his \$500,000. That legal action was dismissed by the Milwaukee County Circuit Court on June 25, 2001 for failing to state a claim upon which relief can be granted. Mr. Ralph appealed to the Wisconsin Court of Appeals, District I, in 2002. The Circuit Court's decision was upheld by the Court of Appeals on December 10, 2002. *Ralph v. Bank One Wisconsin*, 259 Wis.2d 933, 657 N.W. 2d 439 (2002) (unpublished opinion).

23. Mr. Ralph did not sue Lighthouse, Mr. Wylie or the Worldgrowth London Joint Venture for his loss.

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<sup>6</sup> In his reply brief, Mr. Ralph denies having received the \$500,000.

24. Petitioners filed their original 1997 Wisconsin and federal income tax returns under date of April 14, 1998. The returns did not include any loss for the premium payment of \$510,000.

25. Under date of December 24, 2001, the Department issued an assessment to petitioners in the amount of \$3,755.33 for the year 1997. The assessment informed petitioners that they had incorrectly subtracted a total capital gain income of \$263,316 from their Wisconsin income reported on Line 1 of their 1997 Wisconsin return. (The assessment had nothing to do with the \$500,000 at issue in this case).

26. Under date of April 12, 2001, petitioners filed an amended Wisconsin income tax return for 1997. The amount of \$500,000 was claimed as a short-term capital loss in calculating petitioners' Wisconsin income on Line 1 of their amended 1997 return. The loss was not listed as an itemized deduction credit. The amended return claimed a refund owing in the amount of \$4,874.

27. By letter dated January 2, 2002, the Department denied petitioners' claim for refund of \$4,874, stating that, although casualty and theft losses may be deducted on Schedule A of federal income tax returns, for 1995 and subsequent years Wisconsin does not allow deductions for casualty losses.

28. By letter to the Department dated January 16, 2002, petitioners disagreed with the Department's December 24, 2001 notice. The letter also challenged the disallowance of the claimed refund on their 1997 amended return. Petitioners asserted that "the \$500,000 loan was incorrectly described as a casualty loss on your

disallowance of our 1997 refund claim," and that the amount was "an investment loss caused by the worthlessness of a partnership investment."

29. Under date of July 14, 2003, the Department issued two separate notices of action to petitioners, construing petitioners' January 16, 2002 letter as petitions for redetermination of the assessment notice dated December 24, 2001 and the refund claim denial notice dated January 2, 2002.

30. On August 26, 2003, petitioners filed a letter with the Commission, appealing from both the Department's Notice of Action relating to the December 24, 2001 assessment (Docket No. 03-I-248) and the Notice of Action denying the refund claim in petitioners' amended 1997 tax return (Docket No. 03-I-249).<sup>7</sup>

31. Since her release from federal prison, Ms. Buckowich has made five monthly restitution payments of \$100 each, in late 2003 and 2004. The Court sent those restitution payments to Mr. Ralph.

### **CONCLUSION OF LAW**

Petitioners did not meet their burden of establishing that they sustained a \$500,000 loss in 1997 and are therefore not entitled to claim the loss for 1997.

### **OPINION**

Assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Puissant v. Dep't of Revenue, Wis.*

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<sup>7</sup> The parties agree that if the Department prevails in the petition for review of the refund claim denial (Docket No. 03-I-249), petitioners owe the amounts due in the December 24, 2001 assessment.

Tax Rptr. (CCH) ¶202-401 (WTAC July 5, 1984). The burden of proving losses is on the taxpayer. *Kuhn v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-767, (WTAC June 23, 2004).

A loss may only be claimed if it was sustained during the year in which it was claimed. *Kuhn*, at p. 4, *citing* I.R.C. § 165(a). In Docket No. 03-I-249, petitioners claim a loss for 1997, but have not shown that the loss was sustained in that year. The addendum to the Joint Venture Agreement provided that Ms. Buckowich would hold the \$500,000 in the Capital Links account. The checking account deposit records for the Capital Links account indicate that on December 31, 1997, the account still contained the \$500,000. That amount was still in the account on January 1, 1998, and amounts were not withdrawn from the account until January 2, 1998.

Petitioners contend that Ms. Buckowich began using the money as her own on December 31, 1997 by having Bank One credit the Capital Links account for \$500,000, upon Ms. Buckowich's representation that the cashier's check in that amount had been lost. Petitioners assert that the \$500,000 should have been sent back to Mr. Wylie on or before December 31, 1997 because Ms. Buckowich had failed to invest it by that date. However, the Promissory Note from Ms. Buckowich to Mr. Wylie undermines petitioners' assertion. It states that Ms. Buckowich was required to provide the original amount of \$500,000, plus interest, to Mr. Wylie by January 1, 1998. Therefore, the fact that on December 31, 1997 the money was put back into the Capital Links account, where it was authorized to be under the Joint Venture Agreement, does not in any way support petitioners' position that Ms. Buckowich began using the money

as her own on December 31, 1997.

Petitioners also assert that on December 31, 1997, Ms. Buckowich began using the \$500,000 as her own by writing personal checks on the Capital Links account. However, this assertion is not established by any of the evidence admitted at the hearing.<sup>8</sup> Even assuming, however, that petitioners had established that Ms. Buckowich wrote checks on December 31, 1997, the amounts were not taken from the account until the following tax year.

That a loss was not sustained in 1997 is also supported by the fact that the \$500,000 was the premium paid for life insurance that was in effect in 1997. Mr. Ralph purchased a variable life insurance policy for which he paid a premium of \$510,000. He provided evidence of insurability and submitted to a physical examination conducted by the insurance company's physician. The Premium Receipt Agreement Mr. Ralph received from Lighthouse Insurance provided that if Mr. Ralph died after the date of the agreement (October 28, 1997) but before underwriting of the policy was completed by Lighthouse Insurance, Lighthouse Insurance would pay to the proposed beneficiary an amount equal to the fair market value of Mr. Ralph's separate account, plus an additional \$10,000. In 1997, the account still contained \$500,000. As a result, petitioners have not established that the \$500,000 became worthless in 1997.

Even if petitioners had established that Ms. Buckowich had converted the \$500,000 to her own use in 1997 or that the life insurance policy was worthless in that

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<sup>8</sup> Petitioners appear to rely on a document marked as Exhibit A, which the presiding Commissioner ruled was inadmissible.

year, petitioners failed to establish that they sustained a loss in 1997 because there was a reasonable prospect of recovery in 1997 and beyond. Treasury Reg. § 1.165-1(d)(2)(i) provides:

If a casualty or other event occurs which may result in a loss and, in the year of such casualty or event, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained . . . until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. . . .

*See also Kuhn*, at p. 5.

Mr. Ralph received a letter from Ms. Buckowich, dated January 21, 1998, promising to pay the \$500,000 on February 15, 1998. Further, Mr. Wylie's law partner received a letter from Tri-Star Oil Corporation UK, Ltd., dated May 17, 1998, informing the law firm that Tri-Star Oil Corporation intended to repay the \$500,000 five banking days after May 18, 1998. The Commission also notes that the formal demand of return of the \$500,000, from Mr. Wylie, was not issued on behalf of petitioners until February 16, 1998.

Additionally, in June 1998, Mr. Wylie sued Ms. Buckowich to recover the investment funds and obtained a judgment against her. Mr. Wiley assigned that legal action to Mr. Ralph on September 3, 1998. "The filing of a lawsuit gives rise to an inference that the taxpayer has a claim for reimbursement that provides a reasonable prospect of recovery." *Lapin v. Commissioner*, 60 TCM 59, 64 (1990). Petitioners have not even established that the judgment against Ms. Buckowich is presently worthless.

Likewise, Mr. Ralph, with counsel, sued Bank One for the same loss in

Milwaukee County Circuit Court on December 29, 2000. When Mr. Ralph's suit against Bank One was dismissed for failing to state a claim, Mr. Ralph, again with counsel, pursued that action further by filing an appeal in the Wisconsin Court of Appeals, which court affirmed the trial court's decision on December 10, 2002.

The Commission also notes that upon Ms. Buckowich's conviction in federal court, she was ordered to pay restitution to Mr. Ralph in the amount of \$500,000.

As evidenced by these legitimate efforts and opportunities to recover the \$500,000, petitioners have failed to show there was not a reasonable prospect of recovery in 1997.

In view of the foregoing, petitioners have not established that a loss was sustained in the year it was claimed and have therefore failed to rebut the presumption of correctness accorded the Department's assessments.<sup>9</sup>

**IT IS ORDERED**

That the Department's Notices of Action are affirmed.

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<sup>9</sup> The Department also argues that the loss was due to theft, which, the Department asserts, is not deductible in Wisconsin. Because the Commission decides the case on the grounds set forth above, it need not decide the Department's additional ground for upholding the assessment.

Dated at Madison, Wisconsin, this 9th day of March, 2005.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**