

STATE OF NEW YORK
THE STATE TAX COMMISSION

In the Matter of the Petition :
of :
VISION ASSOCIATES, INC. :
for redetermination of a deficiency :
or for refund of franchise tax under :
Article 9-A of the Tax Law for the :
taxable year ended December 31, 1965. :

Vision Associates, Inc., having filed a petition for redetermination of a deficiency or for refund of franchise tax under Article 9-A of the Tax Law for the taxable year ended December 31, 1965, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on February 7, 1968 before Donald H. Gilhooly, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer's representative, David S. Ribet, CPA, appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That the taxpayer was incorporated under the laws of New York State on December 3, 1959;
- (2) That a statement of audit adjustment was mailed September 15, 1967, showing an added tax of \$994.62, and a notice of deficiency was issued therefor on November 15, 1967, computed as follows:

Taxable Year Ended December 31, 1965

New York entire net income before allow-	
ance of a net operating loss deduction	\$24,992.00
Less New York net operating loss deduction	<u>24,992.00</u>
New York entire net income	- 0 -
Add officers' salaries	85,597.00
Less statutory exclusion	<u>15,000.00</u>

Balance	\$70,597.00
30% of balance	21,179.10
Tax at 5½%	1,164.85
Tax per report	170.23
Deficiency	\$ 994.62

(3) That the taxpayer's franchise tax report for the taxable year ended December 31, 1965 showed entire net loss of \$60,280 after subtracting a Federal net operating loss deduction of \$85,272, which was the unused remainder of a Federal net operating loss sustained during the taxable year ended December 31, 1964;

(4) That the Federal taxable income for the year ended December 31, 1965, before application of the Federal net operating loss deduction, was \$24,992;

(5) That Section 172 of the Internal Revenue Code provides for a net operating loss deduction;

(6) That Section 208.9(f) of Article 9-A reads, in part, as follows:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, * * * except that (1) any net operating loss included in determining such deduction shall be adjusted to reflect the inclusions and exclusions from entire net income required by paragraphs (a), (b) and (g) hereof, (2) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-one, * * * and (3) such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, * * *."

(7) That during the taxable year ended December 31, 1965 salaries were paid to elected or appointed officers as follows:

<u>Name</u>	<u>Official Title</u>	<u>Amount</u>
Lee R. Bobker	President	\$40,000
Irving L. Oshman	Vice President	23,000
Helen Kristt Radin	Secretary-Treasurer	20,000
S. Weissman	Treasurer	2,597
	Total	<u>\$85,597</u>

(8) That S. Weissman, Treasurer, retired during 1965 and thereupon Helen Kristt Radin, who had been Secretary, was appointed Secretary-Treasurer for the balance of the year 1965;

(9) That Section 210.1 of Article 9-A reads, in part, as follows:

"The tax imposed by subdivision one of section two hundred nine of this chapter shall be, in the case of each taxpayer: (a) a tax (1) * * *, or (2) * * *, or (3) computed at the rate of four and one-half per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, * * *, that the tax computed on the basis of all or any part of each and every fiscal or calendar year beginning after July thirty-first, nineteen hundred forty-seven * * * shall be at the rate of five and one-half per centum instead of four and one-half per centum. * * *."

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby

DECIDES:

(A) That only \$24,992 of the 1964 net operating loss was necessary to reduce 1965 Federal taxable income to zero;

(B) That under the provisions of clause (3) of Section 208.9(f) of Article 9-A of the Tax Law, only \$24,992 of the net operating loss deduction is allowable;

(C) That under the provisions of clause (3) of Section 210.1 of Article 9-A of the Tax Law the salaries paid to the appointed or elected officers were properly included in the computation of the tax;

(D) That, accordingly, the notice of deficiency for the taxable year ended December 31, 1965 is correct;

(E) That the deficiency does not include any taxes or other charges which could not have been lawfully demanded, and that the taxpayer's petition for redetermination of deficiency or for refund is hereby denied.

Dated: Albany, New York

this 9th day of March 1970

THE STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER