

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition

of

CAPRI LANES, INC.

for redetermination of deficiency
of franchise tax under Article 9-A
of the tax law for fiscal year
ended August 31, 1965.

Capri Lanes, Inc. having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for fiscal year ended August 31, 1965 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, on June 11, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Seymour M. Tannenbaum, Esq., president of the taxpayer, and Cyrus Rudman, C.P.A., accountant for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

- (1) The taxpayer was incorporated in New York on September 15, 1960.
- (2) On November 15, 1966 notice of deficiency for the fiscal year ended August 31, 1965 was issued for \$4,770.55 plus interest. Timely petition for redetermination of the deficiency was filed by the taxpayer.
- (3) After preliminary hearing, the deficiency was reduced to \$2,398.03 plus interest. A net operating loss deduction of \$122,965.69 at item 5 of schedule B was disallowed and the deficiency for the fiscal year ended August 31, 1965 was modified as follows:

Entire net income	\$47,766.67
Tax at 5 1/2%	2,627.17
Tax reported	229.14
Deficiency	\$ 2,398.03

(4) The rider in support of the net operating loss deduction claimed at item 29(a) of the federal report was submitted in support of the net operating loss deduction claimed at item 5 of schedule B and is as follows:

Loss Fiscal Year 8/31/61	\$ 90,621.47
Loss Fiscal Year 8/31/62	<u>111,978.99</u>
Total	\$202,600.46
Less: surplus adjustment reducing loss of August 31, 1961 and August 31, 1962	<u>137,260.52</u>
Net amount	65,339.94
Add: loss fiscal year August 31, 1963	<u>57,625.75</u>
Total net operating loss deduction	\$122,965.69

(5) The computation of the surplus adjustment of \$137,260.52 is as follows:

Cost of assets per books	\$471,438.49
Less: accumulated depreciation	<u>264,849.63</u>
Book value of fixed assets (net)	206,588.86
Less: notes payable to Brunswick Corporation	<u>328,755.67</u>
Net amount	122,166.81
Add: interest due to Brunswick Corporation previously accrued but not paid	<u>15,093.71</u>
Total adjustment to surplus due to repossession of pinsetters and equipment	\$137,260.52

(6) Revenue Ruling 58-600 pertaining to federal treatment states, in part:

"The cancellation of the indebtedness of a taxpayer neither results in the realization of gross income nor affects the taxpayer's net operating loss carryovers from prior years where the taxpayer was insolvent before the debt cancellation and, after the debt cancellation, either remains insolvent or has no excess of assets over liabilities."

(7) Section 172 of the Internal Revenue Code provides for a net operating loss deduction.

(8) 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) * * *, (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, * * *

The State Tax Commission hereby

DECIDES:

(A) The taxpayer was insolvent both before and after the debt cancellation and, therefore, in accordance with federal treatment, the debt cancellation does not result in income during the fiscal year ended August 31, 1965, nor does it result in any adjustment of the net operating loss carryforward to the fiscal year ended August 31, 1965.

(B) Federal income for the fiscal year ended August 31, 1965 of \$47,484.74 was eliminated by the application of \$47,484.74 of a loss incurred in the fiscal year ended August 31, 1961.

(C) Under the provisions of Clause (2) of Section 208.9(f) of Article 9-A of the tax law, losses incurred in the fiscal year ended August 31, 1961 are required to be excluded in computing the net operating loss deduction for state purposes.

(D) The notice of deficiency, as modified in the amount of \$2,398.03 after the preliminary hearing, is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York
this 22nd day of October 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner