

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

*Income Tax Determination*  
*A-2*  
*Leshinsky, Joseph & Lillian*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
Joseph and Lillian Leshinsky	:	Affidavit of Mailing
	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of Personal Income	:	
Taxes under Article(s) 22 of the Tax	:	
Law for the year(s) 1960, 1961 and 1962:	:	

State of New York  
County of Albany

Lynn Horodowich, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 22 day of July, 1969 she served the within Notice of Decision (or of "Determination") by registered mail upon Joseph and Lillian Leshinsky the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. J. Leshinsky, 15 Kimhunter Road, Englewood Cliffs, N.J. and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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  
22 day of July, 1969.

*Lawrence A. Newman*  
*Hearing Officer*

*Lynn Horodowich*

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	Affidavit of Mailing
Joseph & Lillian Leshinsky	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of Personal Income	:	
Taxes under Article(s) 22 of the Tax	:	
Law for the year(s) 1960, 1961, 1962	:	

---

State of New York  
County of Albany

Lynn Horodowich, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 22 day of July, 1969 she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Theodore Mate, CPA, 570 7th Avenue, N.Y. N.Y. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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

22 day of July, 1969.

*Lawrence S. Newman*  
hearing officer

*Lynn Horodowich*

To. Mr. Rook

Re: Joseph and Lillian Leshinsky  
Hearing before Mr. Frank DeBellis, 1965  
Art. 22, years 1960, 1961 and 1962.

Proposed decision recommended for  
approval.

July 2, 1969

LAN:pw

A handwritten signature in black ink, appearing to read 'Old' followed by a stylized flourish or 'L.A. Newman'.

From Lawrence A. Newman

## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determination*  
*A-2*  
*Leshinsky Joseph*  
*& Lillian*

TO: Commissioners Murphy, Palestin and Macduff

FROM: Frank DeBellis

SUBJECT: Joseph and Lillian Leshinsky,  
Petition for a redetermination of a  
deficiency or for refund of personal  
income taxes under Article 22 of the  
Tax Law for years 1960, 1961 and 1962

A hearing with reference to the above matter was scheduled to be held before me at 80 Centre Street, New York, New York on November 22, 1965 at 3:30 p.m. No appearance was made by or on behalf of the taxpayers, nor was any request for adjournment or other communication received from the taxpayers. It is therefore recommended that a determination be made upon the record as it is presently constituted.

The issues in this case are:

- (1) Whether or not the petition for redetermination of a deficiency was timely filed by the taxpayers, and
- (2) Whether or not the taxpayers have established that claimed capital losses of \$1,000 in each year under consideration were derived from or connected with New York sources, as required by section 632(b)(3) of the Tax Law.

Notice of deficiency was mailed to the taxpayers on April 13, 1964. The petition for redetermination of deficiency was mailed by the taxpayers on July 13, 1964. although the mailing of the petition was on the ninety-first day following April 13, 1964, it is noted that July 12, 1964, the ninetieth day, was a Sunday. Under the provisions of section 691(c) of the Tax Law:

"When the last day prescribed . . . for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday."

Accordingly, the taxpayers' petition herein should be considered on the merits, as it was timely filed.

The record as presently constituted is essentially as follows:

(1) The taxpayers claimed a New York net long-term capital loss in each of the years 1960, 1961, and 1962 on their nonresident returns for such years.

(2) In response to an inquiry of December 12, 1963, for an explanation and details of the capital loss claimed for the year 1962, taxpayers merely indicated that it was a capital loss carry-over from 1957.

(3) On April 13, 1964 a notice of deficiency was mailed to taxpayers, along with a Statement of Audit Changes explaining the disallowance of capital loss claimed in 1960, 1961 and 1962 on the ground that no evidence was received that the loss was connected with property located in New York State.

(4) Taxpayers' petition sets forth their ground of protest as "capital loss incurred in New York State."

The taxpayers have failed to furnish any details of the capital loss claimed, and have not established their right to deduct the same. I therefore recommend that the deficiency asserted for the taxable years 1960, 1961 and 1962 be sustained and that the taxpayers' petition for re-determination of a deficiency be denied.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

---

Senior Attorney

FEB:164

December 23, 1965

## STATE TAX COMMISSION

**PETITION FOR A REDETERMINATION OF A  
DEFICIENCY, OR FOR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 22 OF THE  
TAX LAW FOR YEARS 1960, 1961 AND 1962**

## DECISION

**The State Tax Commission hereby finds:**

(3) That on April 13, 1964 audit changes were made recomputing the tax liability of the taxpayers for the years 1960, 1961 and 1962, disallowing the claimed capital losses and imposing additional taxes in the sum of \$57.60 for the year 1960, \$39.97 for the year 1961, and \$30.00 for the year 1962, and that notice of deficiency was issued pursuant thereto on April 13, 1964.

(4) That the taxpayers have failed to establish that the claimed capital loss deductions were derived from or connected with New York sources as required by section 632(b)(3) of the Tax Law.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

That the notice of deficiency imposing additional taxes upon the taxpayers for the years 1960, 1961 and 1962 is correct; that said notice of deficiency does not include any tax or other charges which could not have been lawfully demanded; and that the taxpayers' petition for redetermination of deficiency with respect thereto be and the same is hereby denied.

DATED: Albany, New York      On the 15th day of      July      1969.

Norman Gallman  
Commissioner

Bruce Mauley  
Commissioner

Milton Kerner  
Commissioner