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

December 9, 1969

Harold Mondshein, Esq.
152 Manhattan Avenue
Brooklyn, New York 11206

Re: Estate of Benjamin Mondshein
Determination of State Tax Commission
Year 1957

Dear Mr. Mondshein:

Your letter of November 28, 1969 is acknowledged.

We have been advised by the Appeals and Opinions Section of the Department of Law that an Article 78 proceeding is now pending before the New York State Supreme Court in regard to this matter.

It would not be advisable for me to comment on the issues while your case is before the Court.

Sincerely,

NORMAN GALLMAN
Acting Commissioner

cc Gallman
Newman
Rook
Scott

DEPARTMENT OF TAXATION AND FINANCE
Income Tax Bureau

To Mr. Edward Rook

Formal Hearing and Determination issued in October. Case in Law Bureau (Mr. Rook). Questions relate to Determination.

IT 443 (9-69) 12/8/69 From Edward D. Igoe

HAROLD MONDSHEIN
ATTORNEY AT LAW

152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206
EVERGREEN 8-9043

Reply for me

DEC 1 - 1969
PRESIDENT'S OFFICE

November 28, 1969

Mr. Norman Gallman
Acting Commissioner of
Taxation and Finance
State Campus
Albany N.Y.

Re: Estate of Benjamin Mondshein
deceased
file 49999844

DEC - 4 1969
OFFICE OF THE DIRECTOR

Dear Mr. Gallman:

I have followed your suggestion in letter dated November 6, 1969 with my appreciation by commencing a 78 proceedings in the above entitled matter.

Nevertheless I can not understand what happened within the department that several errors of omission were made. If this letter can alleviate future problems for other taxpayers, then it will be worthwhile to look into the within questions.

1. Why was your own employee's letter of Dec 15, 1966 agreeing with taxpayer's position that this situation was not a final determination omitted and ignored? I refer to Mr. Jacob Bodian, Income Tax Audit Supervisor of the Income Tax Bureau.

2. Why was our copy of the original federal claim of 2/6/65 ignored and its wording,"Revenue Agent didn't give us credit under Section 481 of the IRS Code" placed in the amended complaint 9/27/66 whereas the true wording is, " *** revenue agent didn't allow proper section 481 adjustment."

3. In view of item 2 why was Section 481 and Section 1314, allowing one year for correction of adjustments ignored.

These are serious errors of omission and misrepresentation and should be more fully discussed. I should like to secure your reaction on same.

Very truly yours,

Harold Mondshein

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

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
STATE CAMPUS
ALBANY, N. Y. 12226

[illegible] TAX COMMISSION

[illegible]

New York

Re: Estate of Benjamin Mondshein
1957 Form [illegible]

[illegible]:

Referring to your letter of November 7, 1966, our letter of September [illegible] was based on the assumption that the 1957 Form [illegible] represented a final determination.

[illegible] you have filed an additional claim for the year 1957 based [illegible] the October 22, 1965 adjustment, it appears that a final [illegible] been made. We will therefore await the final conclusion of this case [illegible] soon as you receive the final determination, will you please send the [illegible] immediately. Please include a copy of any subsequent adjustment [illegible] case, a copy of the closing letter of denial.

When replying, please refer to our File [illegible].

Very truly yours,

[illegible]

AHE:MMK

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS
ALBANY, N. Y. 12226

[illegible] COMMISSION

[illegible]

[illegible] & [illegible]

[illegible] New York

Re: Estate of [illegible]
1957 Form [illegible]

[illegible]

Referring to your letter of November 7, 1966, our letter of September [illegible] is based on the assumption that the 1957 Form [illegible] [illegible]

If you have filed an additional claim for the [illegible] the October 22, 1965 adjustment, [illegible] we will therefore await the final [illegible] be made. [illegible] Please include a copy of any subsequent adjustment [illegible] a copy of the [illegible]

In reply, please refer to our file [illegible]

Very truly yours,

[illegible]

[illegible]

AB:MMK

Income Tax Determin.
A-Z
Mondshein, Benjamin
(Est. of)

NORMAN F. GALLMAN
ACTING COMMISSIONER
OF TAXATION AND FINANCE

STATE OF NEW YORK
DEPARTMENT OF
TAXATION AND FINANCE
ALBANY, NEW YORK 12226

November 6, 1969

Harold Mondshein, Esq.
152 Manhattan Avenue
Brooklyn, New York 11206

Re: Estate of Benjamin Mondshein
Request for Rehearing, Year 1957

Dear Mr. Mondshein:

The State Tax Commission has considered your letters dated October 27 and 28, 1969, and your reasons for disagreement with a determination adopted by the Tax Commission on October 23, 1969.

After reviewing the matter, the Tax Commission has declined your request for a rehearing.

However, if you wish to pursue the matter further, a proceeding to review the determination of the Tax Commission may be commenced in the Supreme Court pursuant to the provisions of Section 375 of the Tax Law within ninety days after the mailing of the notice of such determination.

Very truly yours,

NORMAN GALLMAN
Acting Commissioner of
Taxation and Finance

cc E. Rook

mailed
11-7-69
copy sent to Litigation
Unit Law Bureau
L.L.

To Gene

Date ______ Time ______

WHILE YOU WERE OUT

Mr. ______

of ______

Phone ______

TELEPHONED		PLEASE CALL HIM	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

Message

Ret Isk of Benjamin

Mandskein file to

Mr. Scott

File ret'd to Mr. Scott

11/12/69 GE.R

AD 85 Operator

To Comm. Koerner

If you approve the attached letter, Comm. Gallman will sign it.

Approved

Milton Koerner

Comm 11/6/1969

ER

From Edward Rook

November 5, 1969

Harold Mondshein, Esq.
152 Manhattan Avenue
Brooklyn, New York 11206

Re: Estate of Benjamin Mondshein
Request for rehearing, year-1957

Dear Mr. Mondshein:

The State Tax Commission has considered your letters dated October 27 and 28, 1969, and your reasons for disagreement with a determination adopted by the Tax Commission on October 23, 1969.

After reviewing the matter, the Tax Commission has declined your request for a rehearing.

However, a proceeding to review the determination of the Tax Commission may be commenced in the Supreme Court pursuant to the provisions of Section 375 of the Tax Law, within ninety days after the mailing of the notice of such determination.

Very truly yours,

NORMAN F. GALLMAN
Acting President
State Tax Commission

NORMAN F. GALLMAN
ACTING COMMISSIONER
OF TAXATION AND FINANCE

STATE OF NEW YORK
DEPARTMENT OF
TAXATION AND FINANCE
ALBANY, NEW YORK 12226

5 Carbons

November 6, 1969

Harold Mondshein, Esq.
152 Manhattan Avenue
Brooklyn, New York 11206

Re: Estate of Benjamin Mondshein
Request for Rehearing, Year 1957

Dear Mr. Mondshein:

The State Tax Commission has considered your letters dated October 27 and 28, 1969, and your reasons for disagreement with a determination adopted by the Tax Commission on October 23, 1969.

After reviewing the matter, the Tax Commission has declined your request for a rehearing.

However, if you wish to pursue the matter further, a proceeding to review the determination of the Tax Commission may be commenced in the Supreme Court pursuant to the provisions of Section 375 of the Tax Law within ninety days after the mailing of the notice of such determination.

Very truly yours,

NORMAN F. GALLMAN
Acting Commissioner of
Taxation and Finance

Hall
Wright
Newman
Litigation Unit

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
JOSEPH H. MURPHY, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12226

TELEPHONE 457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

November 5, 1969

DRAFT

Harold Mondshein, Esq.
152 Manhattan Avenue
Brooklyn, New York 11206

Re: Estate of Benjamin Mondshein
Request for rehearing, year-1957

Dear Mr. Mondshein:

The State Tax Commission has considered your letters dated October 27 and 28, 1969, and your reasons for disagreement with a determination adopted by the Tax Commission on October 23, 1969.

After reviewing the matter, the Tax Commission has declined your request for a rehearing.

However, if you wish to pursue the matter further, a proceeding to review the determination of the Tax Commission may be commenced in the Supreme Court pursuant to the provisions of Section 375 of the Tax Law, within ninety days after the mailing of the notice of such determination.

Very truly yours,

NORMAN F. GALLMAN
Acting President
State Tax Commission

This is an addition
to Mr. Mondshein's
letter of 10/27/69 and
should be attached to
that letter. Frances

HAROLD MONDSHEIN
ATTORNEY AT LAW

152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206
EVERGREEN 8-9043

October 28, 1969

State Tax Commission
State Campus
Albany N.Y. 12226

Estate of Benjamin Mondshein
for Refund
Request for Rehearing submitted
on Oct 27, 1969

Gentlemen:

This letter is in addition to that sent out on Oct 27,1969.

11. The statutory notice of August 1, 1968 by the Regional Office to taxpayer on the 1957 Claim disproves your findings of fact that taxpayer did not file an appeal with the Internal Revenue Service and that Oct 22, 1965 notice was a final determination. To the contrary it states as follows:

"We received your claim for an adjustment of your taxes, ~~[illegible]~~ etc.

" If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter."

A copy of Regional Office of Internal Revenue Service letter dated Aug 1, 1968 is attached herewith.

12. It seems strange that whereas taxpayer has been advised by the Regional Office of the IRS that the final date of proceeding on this case is 2 years from August 1, 1968 or August 1, 1970, the State Tax Commission should interpret the same claim and facts as a final determination as of Oct 22, 1965.

13. In item (3) of the State Tax Commission finding of facts, the Commission alleges that Taxpayer made a claim "Revenue Agent didn't give us credit under Section 481 of the IRS Code" following Oct 22, 1965 or Sept 27, 1966.

This is incorrect. I refer to the dialogue on page 15 of the minutes. The statement was made on 2/2/65. By changing the date, a different conclusion was reached.

Mr. Mondshein: At this time I would like to present the claim made by taxpayer to the Federal Government on 2/2/65 to the effect asking for refund based on the fact that Revenue Agent did not give us credit under Section 481 of the IRS Code.

14. Section 481 is arithmatic; a difference between the accounts payable and accounts receivable at the beginning of the year of change. This is explained in the cited cases of John A. Biewer 41 TC 21, and arithmatic can be changed within one year of computation under case of Graff Chevrolet Co. v Ellis Campbell Jr. 143 Fed 2nd 568.

15. The State Tax Commission knew of the arithmatic involved and had agreed to same in the letter of Jacob Bodian dated Dec 15, 1966

May I request acknowledgment of these letters and a rehearing at an early date.

Very truly yours,

Harold Mondshein

copy of Statutory notice
" Determination
State Tax Commission Members

US Treasury Department

Internal Revenue Service Center

North-Atlantic Region

Date: August 1, 1968 | In reply refer to: RSC-105

Estate of Benjamin & Lillian Mondshein
152 Manhattan Ave.
Brooklyn, NY 11206

CERTIFIED MAIL

Social Security Number or Employer Identification Number:	082-28-6877
Document Locator Number:	--
Type of Tax:	1040
Period Ending:	December 31, 1957 plus interest
Amount Claimed:	$3,809.28 includes self employment tax
Date Claim Received:	September 27, 1966

Dear Taxpayer:

We received your claim for an adjustment of your taxes. I am sorry to tell you that we cannot allow your claim. This decision rests on certain provisions of the internal revenue laws and regulations.

Hence, I have sent this letter to you by certified mail. This letter is your legal notice from Internal Revenue that your claim has been officially rejected. It has been disallowed in full.

If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter.

Sincerely yours,

Norman E. Maxwell

Director, Service Center

FORM RSC-105 REV. 12-67

You will please take notice of a Determination made under Article 16 of the Tax Law by the New York State Tax Commission in the within entitled matter on the 23rd day of October, 1969.

In the Matter of the Application

of

ESTATE OF BENJAMIN MONDSHEIN

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1957

DETERMINATION

Dated: October 23, 1969

TO: Jerome Feldman, CPA
90-26 161st Street
Jamaica, New York

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of the ESTATE OF BENJAMIN MONDSHEIN For refund of Personal Income Taxes under Article 16 of the Tax Law for the Year 1957	:	DETERMINATION

Mrs. Lillian Mondshein, as executrix of the Estate of Benjamin Mondshein has filed a Demand for Hearing in the matter of an application for refund of Personal Income Taxes for the year 1957. A formal hearing was held before Lawrence A. Newman, Hearing Officer, to determine the timeliness of her application for refund. The applicant was represented by Jerome J. Feldman, C.P.A., assisted by Harold Mondshein, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq.,(Solomon Sies, Esq., of Counsel.)

FINDINGS OF FACT:

(1) On October 22, 1965, the United States Internal Revenue Service notified the applicant that as a result of an examination of the income tax return of Benjamin Mondshein (deceased) and Lillian Mondshein, his widow, for the year 1957, an overassessment was determined and a refund would be made of the overpayment. The applicant had indicated agreement to the conclusions shown on the report at the time of the examination.

(2) On August 26, 1966, the applicant filed form IT-115, Notice of Change in Taxable Income by the United States Treasury Department with the Department of Taxation and Finance.

The applicant claimed that a refund was due of New York Personal Income and Unincorporated Business Taxes in the sum of $2614.75.

(3) On September 27, 1966, the taxpayer filed an additional

notice was filed in excess of 90 days after the notice of the Federal final determination.

D. The said notice of final determination alleged an overassessment of New York Personal Income and Unincorporated Business Tax, constituting a claim for refund of the alleged overassessment.

E. The aforesaid claim for refund was not timely filed.

F. The aforesaid claim for refund is hereby denied.

Dated: Albany, New York, this 23rd day of October 1969.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Edward Mauley
COMMISSIONER

Milton Koerner
COMMISSIONER

HAROLD MONDSHEI
152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206

Mr. Milton Koerner
Commissioner
State Tax Commission
State Campus
Albany N.Y.

RETURN RECEIPT REQUESTED

Certified Mail
Return Receipt Requested

CERTIFIED
No 111131
MAIL

10/27/69

AD-1 (10-66) 5M State of New York - Department of Taxation and Finance

From **JOSEPH H. MURPHY** Commissioner

Forward original and duplicate of this form with attachments

TO: Mr. Edward Rook

BUREAU OR OFFICE

FOR:

1. ☐ Your Information
2. ☐ Written Comments
   N.G.
3. ☒ Reply foXXXXX signature
4. ☐ Your Attention And Reply Direct To Correspondent
5. ☐ Discussion With J.H.M.

Material From The Governor's Office:

6. ☐ Reply for J.H.M. signature and forward original and 4 copies to Commissioner's Office
7. ☐ Suggested reply for use by the Governor's Office and forward original and 3 copies to Commissioner's Office

4-L

Name of Correspondent

Harold Mondshein, Esq.

Address 152 Manhattan Avenue
Brooklyn, New York 11206

RE: XXXXXXXXXXXX
~~Estate of Benjamin Mondshein~~
for refund under article 16----
request for a rehearing

DATE: 10/30/69

Please prepare an original and 3 copies of all written material forwarded to this office except as otherwise noted. Also, kindly return original copy of this memo with any material forwarded in regard to the matter in upper right box.

OTHER INFORMATION:

Joseph H. Murphy

HAROLD MONDSHEIN
ATTORNEY AT LAW

152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206
EVERGREEN 8-9043

October 27, 1969

State Tax Commission
State Campus
Albany N.Y . 12226

Estate of Benjamin Mondshein
for Refund under Article 16
Request for rehearing

Gentlemen:

With regard to determination of October 23rd, 1969 on the above mentioned matter, request is made for a rehearing:

1. Failure of the Tax Commission ro rule on admimibility of Appellate Division Income Tax settlement form 870 AD as an exhibit into evidence at the formal hearing.

Page 24 of the Formal Record states as follows:

Mr. Newman: Subject to the Tax Commission's determination as to admissibility of the document, it will be marked for identification as Petitioner's Exhibit 6

2. To date Petitioner has not received a ruling from either Hearing Officer Newman or the Tax Commission.

3. Items 1 and 2 are important in view of the definition of the phrase " final determination" which hearing officer has failed to state in the report, and which Petitioner submitted in his exhibit Menatt's New York State Tax Atlas.

"A final determination is an irrevocable determination or adjustment of a taxpayer's Federal Tax liability for which there exists no further right of appeal either administrative or judicial".

4. Appellate Division of the U.S. Internal Revenue Service is an administrative body and it is provided for Taxpayer's right to appeal under the Statement of Procedural Rights.

5. The above form 870 A.D. speaks for itself that the Petitioner had appealed to the administrative body and the U.S. Internal Revenue Service never questioned Petitioner's right. Therefore findings of fact marked (5) and (6) that Petitioner failed to prove "protest" is incorrect.

6. The Department of Taxation and Finance knew as far back as Sept 21, 1966 and Nov 7, 1966 of Petitioner's protest. What better proof can be offered than letter of Jacob Bodian, Income Tax Audit Supervisor, Income Tax Bureau dated Dec 15, 1966:

" As you have filed an additional claim for the year 1957 based on a disagreement with the October 22, 1965 adjustment, it appears that a final determination has not been made."

7. In view of the fact that Mr. Bodian of your department has stated that a final determination has not been made, what prompts your department to state otherwise at this time. Furthermore the U.S. Internal Revenue Service states that a final determination has not been made otherwise Section 1311-15 mitigating circumstances would

HAROLD MONDSHEIN
ATTORNEY AT LAW

152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206
EVERGREEN 8-9043

October 27, 1969

be justified. This is clearly stated in the record.

8. Failure of both Income Tax Bureau representative to introduce the letter of Dec 15 1966 by Mr. Jacob Bodian, of the Income Tax Bureau and subsequently the failure of Mr. Newman, the hearing officer to include the letter into the record when he was apprised by the Petitioner of same constituted an error prejudicial to the Petitioner. Likewise failure to rule on Section 481 was error.

9. In the face of the letter of Dec 15, 1966 by Mr. Jacob Bodian of the Income Tax Bureau, the hearing officer was wrong in his findings of facts and he failed to show why Mr. Jacob Bodian findings should be overturned. The Income Tax Bureau had taken a position and Petitioner followed it accordingly.

10. Petitioner requests a rehearing on the basis of items 1 to 9 in this letter, and requests a prompt reply on her objections on the facts, introduction of Mr. Jacob Bodian's letter of Dec 15,1966, ruling on admissibility of Income Tax Form 870-A.D. and the law on Section 481, the definition of Final Determination and its application to Form 870 A.D. and to findings of facts and determination of this case.

Thank you for your courtesy,

Very truly yours,
Harold Mondshein
Harold Mondshein

c/c Norman Gallman, President
State Tax Commission
A. Bruce Manley
Commissioner
Milton Koerner
Commissioner
Edward H.Best, Esq.
Litigation Section

Copy of letter Jacob Bodian
dated Dec 15, 1966
to Laurence Newman
dated Oct 14, 1969

GR 4-2121

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS
ALBANY, N. Y. 12226

INCOME TAX BUREAU
[illegible]
DIRECTOR
[illegible]

DEC 15 1967

Feldman & Feldman
90-26 161st Street
Jamaica 32, New York

Re: Estate of Benjamin Mondshein
1957 Form IT-115

Gentlemen:

Referring to your letter of November 7, 1966, our letter of September 21, 1966 was based on the assumption that the 1957 Form IT-115 represented a final determination.

As you have filed an additional claim for the year 1957 based on a disagreement with the October 22, 1965 adjustment, it appears that a final determination has not been made. We will therefore await the final conclusion of this case. As soon as you receive the final determination, will you please send the information immediately. Please include a copy of any subsequent adjustment or if none are made, a copy of the closing letter of denial.

When replying, please refer to our File #49999844.

Very truly yours,

Jacob Bodian

Jacob Bodian
Income Tax Audit Supervisor
Income Tax Bureau

CAH:MMK

October 14, 1969

Lawrence A Neumann, Esq.
Hearing Officer
Department of Taxation and Finance
Building # 9
State Campus
Albany N.Y. 12226

Re: Estate of Benjamin
Mendsheim (deceased)
year 1957

Dear Mr. Neumann:

On September 15, 1969 I addressed a letter to you enclosing a copy of letter dated Dec 15, 1966 from Jacob Bodian, Income Tax Audit Supervisor, Income Tax Bureau on the question of final determination, and requested that this letter be made part of the record in the above mentioned hearing.

To date I have not received an acknowledgement of my letter and would appreciate a statement on whether you had received it.

I repeat pertinent parts of Mr. Bodian's letter: " As you have filed an additional claim for the year 1957 based on a disagreement with the Oct 22, 1965 adjustment, it appears that a final determination has not been made. We will therefore await the final conclusion of this case. As soon as you receive the final determination will you please send the information immediately. Please include a copy of any subsequent adjustment or if none are made, a copy of the closing letter of denial."

...ly reply.

...ly yours,

...Mendsheim

RECEIPT FOR CERTIFIED MAIL—20¢

Dept of Taxation & Finance

State Campus

CITY, STATE AND ZIP CODE

Albany N.Y. 12226

If you want a return receipt, check which: shows to whom and when delivered; 35¢ shows to whom, when, and address where delivered

If you want delivery only to addressee, check here: 50¢ fee

FEES ADDITIONAL TO 20¢ FEE

NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL

(See other side)

July 1963

260293

HAROLD MONDSHEIN
152 MANHATTAN AVENUE
BROOKLYN, N. Y. 11206

Mr. Milton Koerner
Commissioner
State Tax Commission
State Campus
Albany N.Y.

CERTIFIED
No 111128
MAIL

Certified mail
return receipt
Requested

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF BENJAMIN MONDSHEIN
HAROLD MONDSHEIN, Esq.

For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 16 of the Tax Law for the (Year(s) 1 957

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

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, over 18 years of age, and that on the 23rd day of October, 1969, she served the within Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Estate of Benjamin Mondshein, dec. (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harold Mondshein, Esq., 152 Manhattan Avenue
Brooklyn, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~) 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
24th day of October, 1969

Grace E. Pritchard

Lynn Horodowich

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of ESTATE OF BENJAMIN MONDSHEIN For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 16 of the Tax Law for the (Year(s) 1957	: : : : :	AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

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, over 18 years of age, and that on the 23rd day of October , 1969 , she served the within Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Estate of Benjamin Mondshein (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jerome Feldman, CPA 90-26 , 161st Street
Jamacia, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~) 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

24th day of October , 1969

Grace E. Pritchard

Lynn Horodowich

AD 53 (2-68)

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Edward Rook
FROM: Lawrence A. Newman
SUBJECT: Estate of Benjamin Mondshein
Article 16 for the Year 1957
Application for refund based on Federal change in taxable income denied for lack of timeliness

DATE September 17, 1969
OFFICE Hearing Room

Taxpayer received a notice of Federal changes of net income on October 22, 1965, based on an examination of the year 1957. The taxpayer had agreed to the findings which had determined an overassessment and refund due.

Taxpayer filed notice of Federal changes with our Department on August 26, 1966, more than 90 days later.

Regulations 270.21 (relating to Section 367, subd. 2, Federal changes in net income) at subdivision (d) permits the refund of overassessment of New York State income taxes, only if the notice of changes has been timely filed with the Department.

Taxpayer contends that a subsequent filing with the United States Treasury Department on September 27, 1966 of an additional claim for refund should renew the time allowed for filing the notice. The later claim was in the nature of a reargument of the same issues and was denied by the United States Treasury Department on the grounds, among others, that this later claim was not timely filed.

The proposed determination denies the taxpayer's claim for refund for lack of timeliness.

Lawrence A. Newman

LAWRENCE A. NEWMAN
Hearing Officer

LAW:jw

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of the ESTATE OF BENJAMIN MONDSHEIN For refund of Personal Income Taxes under Article 16 of the Tax Law for the Year 1957	: : : : :	DETERMINATION

Mrs. Lillian Mondshein, as executrix of the Estate of Benjamin Mondshein has filed a Demand for Hearing in the matter of an application for refund of Personal Income Taxes for the year 1957. A formal hearing was held before Lawrence A. Newman, Hearing Officer, to determine the timeliness of her application for refund. The applicant was represented by Jerome J. Feldman, C.P.A., assisted by Harold Mondshein, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq.,(Solomon Sies, Esq., of Counsel.)

FINDINGS OF FACT:

(1) On October 22, 1965, the United States Internal Revenue Service notified the applicant that as a result of an examination of the income tax return of Benjamin Mondshein (deceased) and Lillian Mondshein, his widow, for the year 1957, an overassessment was determined and a refund would be made of the overpayment. The applicant had indicated agreement to the conclusions shown on the report at the time of the examination.

(2) On August 26, 1966, the applicant filed form IT-115, Notice of Change in Taxable Income by the United States Treasury Department with the Department of Taxation and Finance.

The applicant claimed that a refund was due of New York Personal Income and Unincorporated Business Taxes in the sum of $2614.75.

(3) On September 27, 1966, the taxpayer filed an additional

claim for refund of taxes with the United States Internal Revenue Service for the year 1957.

The claim alleged that the "Revenue Agent didn't give us credit under Section 481 of the I.R.S. Code." This statement related to the notice of examination of the year 1957, dated October 22, 1965.

(4) On November 2, 1967, the United States Internal Revenue Service disallowed this claim in full because the taxpayer had not filed her claim within the three year period specified in Section 6511(a) of the Internal Revenue Code of 1954.

The taxpayers protested the proposed action, and on July 12,1968, the Regional Commission of the Internal Revenue Service notified the taxpayers that the Appellate Branch had affirmed the denial of their claim for refund of November 2, 1967 on the same grounds.

(5) The applicant has not pleaded or proved that any protest was made of the notice of examination dated October 22, 1965.

In the absence of any appeal by the applicant to the notice of October 22, 1965, the action by the United States Internal Revenue Service constituted a final and irrevocable determination of Federal tax liability.

(6) The taxpayer filed the notice of change in taxable income more than 90 days after a final and irrevocable determination of Federal tax liability.

DETERMINATION:

A. The claimant received a notice from the Internal Revenue Service of a final determination of a change in Federal net income for the year 1957.

B. The said final determination found an overassessment of Federal income taxes for the year 1957.

C. The claimant filed a notice of change in Federal taxable income with the Department of Taxation and Finance, but the said notice was filed in excess of 90 days after the notice of the Federal final determination.

D. The said notice of final determination alleged an overassessment of New York Personal Income and Unincorporated Business Tax, constituting a claim for refund of the alleged overassessment.

E. The aforesaid claim for refund was not timely filed.

F. The aforesaid claim for refund is hereby denied.

Dated: Albany, New York, this 23rd day of October 19 69.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER