

STATE OF NEW YORK
STATE TAX COMMISSION

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In the Matter of the Petition s

of

Doris Kern Judith Gardner
Bertha Slipoy
Herbert Slipoy
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) 1959

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

State of New York
County of Albany

Janet Wright, 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 24th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon James R.

Zuckerman, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James R. Zuckerman, Esq.
350 Fifth Avenue
New York, 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 November, 1970

Lawrence J. Korman

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Doris Kern

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) 1959

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

State of New York
County of Albany

Janet Wright, 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 24th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Doris Kern

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Doris Kern
175 Birchwood Pk Drive
Jericho, 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 November, 1970.

Lawrence P. Roman

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Herbert Slipoy

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) 1959

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

State of New York
County of Albany

Janet Wright, 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 24th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Herbert Slipoy (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herbert Slipoy
881 Knota Road
Woodmere, 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 November, 1970.

Lawrence A. Newman

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Judith Gardner

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) 1959

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

State of New York
County of Albany

Janet Wright, 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 24th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Judith Gardner (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Judith Gardner
1 Cobb Court
Huntington, 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 November, 1970.

Lawrence A. Fierman

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Bertha Slipoy

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) 1959

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

State of New York
County of Albany

Janet Wright, 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 24th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Bertha
Slipoy (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

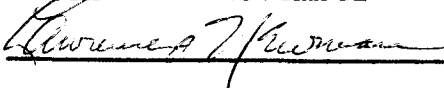
Bertha Slipoy
141 East 54 Street
Brooklyn, New York

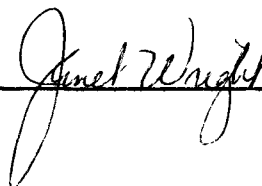
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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 November, 1970.


Notary Public


Janet Wright

STATE TAX COMMISSION

OF

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1959.

DETERMINATION

The State Tax Commission hereby finds:

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31, dividends received from Jacslip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970094) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Inc. and Jackslip Realty Corporation which liquidated in the year 1959 and that a capital gain was realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value. As gain was omitted from return, tax is assessed on additional income disclosed." On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included

in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959. He contends that the dividends reported by him as received from Bertslip Realty Co., Inc. both on his Federal and New York State returns for the year 1959 were reported in error and that the same represented a liquidation distribution from Bertslip Realty Co., Inc. attributable to 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforementioned corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and the taxpayer herein owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and

that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest; Judith Gardner, having a 19.17% interest; Doris Kern, having a 19.17% interest; Herbert Slipoy, having a 19.16% interest doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofor mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries affecting the winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of his stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970094 for the year 1959) is correct. The aforesaid assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

Dated: Albany, New York on the 27th day of November, 1970.
November 27, 1970

STATE TAX COMMISSION

Norman Galloran

President

Bruce Manley

Commissioner

Milton Koenig

Commissioner

STATE TAX COMMISSION

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959.

Doris Kern, the taxpayer herein, filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959. A hearing was held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, N.Y. on the 29th day of April, 1964 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by her attorney, James R. Zuckerman, Esq., 350 Fifth Avenue, New York, N.Y. Testimony was taken and the record has been duly examined and considered,

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31 dividends received from Jacslip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970097) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Incorporated and Jacslip Realty Corporation which liquidated in the year 1959 and that a capital gain was realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over

the book value. As gain was omitted from return, tax is assessed on additional income disclosed". On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertsliip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertsliip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertsliip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertsliip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State

of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Co., Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970097 for the year 1959) is correct. The aforesaid

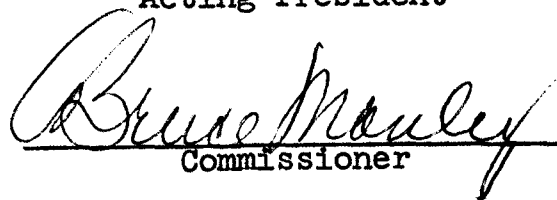
assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 27th day of November, 1970.

STATE TAX COMMISSION



Acting President



Commissioner



Commissioner

On March 21, 1963 the Department of Taxation and Finance cancelled

a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertslip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N. Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the

corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351 Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970098 for the year 1959) is correct. The aforementioned assessment does not include any tax or other charge which could

not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 21st day of November, 1970.

STATE TAX COMMISSION


Acting President


Commissioner


Commissioner

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

BERTHA SLIPOY

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1959.

DETERMINATION

Bertha Slipoy, the taxpayer herein, filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959. A hearing was held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, N.Y. on the 24th day of March, 1964 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by her attorney, James R. Zuckerman, Esq., 350 Fifth Avenue, New York, N.Y. Testimony was taken and the record has been duly examined and considered.

The State Tax Commission hereby finds:

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31 dividends received from Jacslip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970096) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Incorporated and Jacslip Realty Corporation which liquidated in the year 1959 and that capital gains were realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value. As gain was omitted

from return, tax is assessed on additional income disclosed." On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertslip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York.

The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip

Realty Co., Inc. was liquidated on December 31, 1959 but the book-keeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

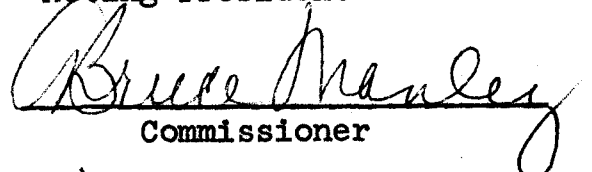
(B) Accordingly, the assessment (Assessment No. B-970096) for the year 1959 is correct. The aforementioned assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 27th day of November, 1970.

STATE TAX COMMISSION



Acting President



Commissioner



Commissioner



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

Albany, New York

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

*Gardner
Per S. Sies
1970*

November 24, 1970

**Judith Gardner
1 Cobb Court
Huntington, New York**

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 375 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

HEARING OFFICER

Lawrence A. Newman

per S. Sies

cc Petitioner's Representative
Law Bureau

a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertslip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N. Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the

corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351 Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970098 for the year 1959) is correct. The aforementioned assessment does not include any tax or other charge which could

not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 21st day of November, 1970.

STATE TAX COMMISSION

James E. Galligan
Acting President

William M. [unclear]
Commissioner

William K. [unclear]
Commissioner



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

Albany, New York

November 24, 1970

Kern
Per Sec
1970

ADDRESS YOUR REPLY TO

Doris Kern
175 Birchwood Fk Drive
Jericho, New York

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 375 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

HEARING OFFICER

Lawrence A. Newman

per S. Sies

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

OF

DETERMINATION

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959.

The State Tax Commission hereby finds:

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31 dividends received from Jacslip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970097) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Incorporated and Jacslip Realty Corporation which liquidated in the year 1959 and that a capital gain was realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over

the book value. As gain was omitted from return, tax is assessed on additional income disclosed". On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertslip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State

of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Co., Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970097 for the year 1959) is correct. The aforesaid

assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 27th day of November, 1970.

STATE TAX COMMISSION



Acting President



Commissioner



Commissioner



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

November 24, 1970

**Herbert Slipoy
881 Knota Road
Woodmere, New York**

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 375 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

HEARING OFFICER

Lawrence A. Newman

per S. Sies

cc Petitioner's Representative
Law Bureau

IN THE MATTER OF THE APPLICATION
OF
HERBERT SLIPOY

DETERMINATION

The State Tax Commission hereby finds:

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31, dividends received from Jacsliip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970094) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Inc. and Jackslip Realty Corporation which liquidated in the year 1959 and that a capital gain was realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value. As gain was omitted from return, tax is assessed on additional income disclosed." On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included

in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959. He contends that the dividends reported by him as received from Bertslip Realty Co., Inc. both on his Federal and New York State returns for the year 1959 were reported in error and that the same represented a liquidation distribution from Bertslip Realty Co., Inc. attributable to 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforementioned corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and the taxpayer herein owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York. The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and

that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest; Judith Gardner, having a 19.17% interest; Doris Kern, having a 19.17% interest; Herbert Slipoy, having a 19.16% interest doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofor mentioned on December 31, 1959. Bertslip Realty Co., Inc. was liquidated on December 31, 1959 but the bookkeeping entries affecting the winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of his stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970094 for the year 1959) is correct. The aforesaid assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

Dated: Albany, New York on the 27th day of November, 1970.

November 27, 1970

STATE TAX COMMISSION

Norman Gellman

President

Bruce M. Kelly

Commissioner

Mittie Krein

Commissioner



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

Slipoy.
STATE TAX COMMISSION
HEARING UNIT
P.I. - 1970
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

November 24, 1970

Bertha Slipoy
141 East 54 Street
Brooklyn, New York

Please take notice of the **Determination**
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 375** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

HEARING OFFICER
Lawrence A. Newman

cc Petitioner's Representative
Law Bureau

per S. Siev

*Returned
no forwarding
address
To be filed w/
envelope*

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

BERTHA SLIPOY

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1959.

DETERMINATION

Bertha Slipoy, the taxpayer herein, filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959. A hearing was held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, N.Y. on the 24th day of March, 1964 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by her attorney, James R. Zuckerman, Esq., 350 Fifth Avenue, New York, N.Y. Testimony was taken and the record has been duly examined and considered.

The State Tax Commission hereby finds:

(1) The taxpayer filed a personal income tax return for the year 1959 and reported on Item 31 dividends received from Jacslip Realty Corp. and Bertslip Realty Co., Inc. On May 31, 1961, the Department of Taxation and Finance made an assessment (Assessment No. B-970096) against the taxpayer for the year 1959 which stated that "Information on file indicates that you were a stockholder of Bertslip Realty Company, Incorporated and Jacslip Realty Corporation which liquidated in the year 1959 and that capital gains were realized therefrom. Capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value. As gain was omitted

from return, tax is assessed on additional income disclosed." On March 21, 1963 the Department of Taxation and Finance cancelled a portion of the aforementioned assessment on the ground that the dividends originally reported by the taxpayer were included in the assets received in the liquidation of the corporations. The taxpayer is not contesting that portion of the assessment insofar as it relates to Jacslip Realty Corp. and concedes that the aforementioned corporation liquidated in 1959, but contends that the dividends reported by her as received from Bertslip Realty Co., Inc. both on her Federal and New York State returns for the year 1959 were reported in error and that same was attributable to the year 1960.

(2) Bertslip Realty Co., Inc. was a domestic corporation organized under the laws of the State of New York on February 5, 1941. The aforesaid corporation was the owner of an apartment house located at 307 Sterling Street, Brooklyn, N.Y. The taxpayers, Herbert Slipoy, Bertha Slipoy, Judith Gardner and Doris Kern, were the sole stockholders of said corporation. Bertha Slipoy owned 42.50% of the shares of stock in said corporation. Judith Gardner and Doris Kern each owned 19.17% of the shares of stock and Herbert Slipoy owned 19.16% of the shares of stock in said corporation.

(3) The stockholders of Bertslip Realty Co., Inc. decided to liquidate said corporation on November 30, 1959 and transfer the assets of the corporation to themselves, individually and as co-partners under the name of Bertslip Realty Co. At a special meeting of the directors and stockholders of the aforementioned corporation held on December 31, 1959, a resolution was passed that the corporation "forthwith" dissolve and the officers be directed to execute and file a certificate of dissolution pursuant to Article 10 of the Stock Corporation Law of the State of New York.

The directors were authorized and directed "forthwith" to proceed to wind up the affairs of the corporation, pay the just claims of creditors, discharge all other obligations of said corporation and have title to its real property conveyed to Bertha Slipoy, Judith Gardner, Doris Kern and Herbert Slipoy doing business as Bertslip Realty Co. according to their individual shares of ownership in the corporation and that the corporation liquidate under Section 333 of the Internal Revenue Code. Pursuant to the aforesaid resolution the books of the corporation, which were kept on a calendar year accrual basis, were closed as of December 31, 1959 and no further business was transacted by the corporation after that date. The deed was executed by Fred Gardner, Assistant Secretary of Bertslip Realty Co., Inc. on December 31, 1959 transferring the real property owned by the corporation to Bertha Slipoy, having a 42.50% interest, Judith Gardner, having a 19.17% interest, Doris Kern, having a 19.17% interest, Herbert Slipoy, having a 19.16% interest, doing business as Bertslip Realty Co. The deed was not recorded in the Registrar's Office of Kings County until January 8, 1960. The certificate of doing business of Bertslip Realty Co. was executed on November 30, 1959 but was not filed in the Office of the Clerk of Kings County until January 7, 1960. The bank account in the name of the corporation with a balance of \$10,647.07 was transferred to the account of Bertslip Realty Co. in the same bank on January 7, 1960. The certificate of dissolution of the corporation dissolving the corporation was filed on January 26, 1960. Each of the stockholders of Bertslip Realty Co., Inc. executed a form 964 (Election of Shareholder under Section 333 of the Internal Revenue Code of 1954) for the dissolution of the aforementioned corporation within one month, which was filed during the month of January, 1960.

(4) The taxpayer and the other stockholders of Bertslip Realty Co., Inc. surrendered their certificates of stock and received the distribution reported by them in redemption of their stock as heretofore mentioned on December 31, 1959. Bertslip

Realty Co., Inc. was liquidated on December 31, 1959 but the book-keeping entries with respect to the liquidation and winding up of the corporation were performed subsequent thereto in January, 1960.

(5) The taxpayer did not file any amended Federal or New York State income tax return for the year 1959.

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

DETERMINES:

(A) Bertslip Realty Company, Inc. was liquidated in 1959. The taxpayer received liquidating dividends from said corporation in 1959 which were subject to capital gain tax to the extent of the excess of the cost basis of her stock. The capital gain is measured by the surplus of the corporation at the date of liquidation plus the excess of the fair market value of the assets distributed over the book value in accordance with subdivision 15 of Section 350 and Section 351, Article 16 of the Tax Law, then in effect.

(B) Accordingly, the assessment (Assessment No. B-970096) for the year 1959 is correct. The aforementioned assessment does not include any tax or other charge which could not have been lawfully demanded. The taxpayer's application for revision or refund filed with respect thereto is therefore denied.

DATED: Albany, New York on the 27th day of November, 1970.

STATE TAX COMMISSION

Thomas L. Gilman
Acting President

Charles W. ...
Commissioner

Wilton K. ...
Commissioner