L.9 (2-67)

BUREAU OF LAW
MEMORANDUM

Income Tax
Lehrer
Zarett
1978

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: HYMAN H. ZARETT

1950 Assessment No. AA-837926
1951 Assessment No. AA-837927

Article 16

ISIDORE LEHRER & HELEN LEHRER, his wife

1950 Assessment No. AA-837928
1951 Assessment No. AA-837929

Article 16

A combined hearing was held in the above matters in the New York City office with the consent of the attorney for both taxpayers since identical issues are involved herein.

The issues involved are: (1) whether each of the taxpayers filed timely demands for hearings; (2) whether a cash distribution by a corporation to its shareholders from unrealized appreciation in the value of its assets is to be treated as income or as a capital gain to the receiving shareholders under Article 16 of the Tax Law, to the extent that the distribution exceeds the cost or basis of the shareholders' stock.

The record indicates that the denial of the applications for revision or refund filed by the taxpayers Isidore Lehrer and Helen Lehrer, his wife, were mailed on December 9, 1955. The denial of Hyman H. Zarett's application for revision or refund was mailed on November 28, 1955. The attorney for the taxpayer submitted an affidavit in lieu of the appearance and sworn testimony of the accountant representing both taxpayers that they (Zarett and Lehrer) executed forms IT-114 (demands for a hearing) on February 15, 1956 and that he personally (the accountant) mailed said demands for hearing on said date by enclosing same in a post paid envelope addressed to the Income Tax Bureau in Albany and deposited same in an official depository maintained by United States within the State of New York. He also enclosed a covering letter. It appears that there was no record of the receipt of said forms by the Income Tax Bureau. A letter was found in the file acknowledging receipt of a demand for hearing concerning another taxpayer.

It has been held that failure to receive an article through the mail raises a presumption that it was not mailed. Where formal proof of mailing is submitted, the presumption disappears since it is not merely evidence in itself and where conflicting evidence is submitted, a jury must decide, free of any presumption, whether the article was in fact mailed. Employers' Liability Assurance Corp. v. Maes, (235 F. 2d 918, 921). See also Crude Oil Corp. of America v. Commissioner of Internal Revenue, (161 F. 2d 809, reversing 6 T. C. 648).

Section 373 of Article 16 of the Tax Law provides that notice of an assessment may be served personally or by mail addressed to the taxpayer at the address given in the last return filed by him. Section 374 provides that an application for revision or refund must be "filed" with the Tax Commission by a taxpayer. It further provides that the Tax Commission may grant or deny such application in whole or in part and may allow a credit or refund. This section further provides, in part, that: "If a demand for hearing, in a form prescribed by the tax commission, is filed with it by a taxpayer within ninety days after the date of such mailing, the Tax Commission shall grant a hearing thereon . . .". Accordingly, under Article 16 of the Tax Law the notice of assessment and the denial of the application for revision or refund may be mailed to the taxpayer but the latter must "file" both the application and the demand for hearing.

There is no definition of the words "file" or "filing" in the Tax Law or the Regulations under Article 16. Prior to the enactment of Section 691 of Article 22 of the Tax Law (Federal conformity), there was no provision contained in the Personal Income Tax Law for the mailing either of returns or applications for revision or refund.

In the case of U.S. v. Aaron, (117 F. Supp. 952), it was held that the mailing of an income tax return is not a filing under Section 53 of the Internal Revenue Code of 1939; Wampler v. Snyder, (66 F. 2d 195); U.S. v. Lafkoff, (113 F. Supp. 551). The Court held that the word "file" means to deliver to the office and not send through the mail; that a paper is filed when it is delivered to the proper official and by him received and filed, citing U.S. v. Lombardo, (241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897).

I am of the opinion that the demands for hearing were in all likelihood received by the Income Tax Bureau but were probably misfiled and cannot be located. It is to be noted that the mail load is very heavy in mid-February. I am, therefore, of the opinion that the taxpayers filed timely demands for a hearing within the statutory time period prescribed in Section 374.

Bayshore Gardens, Inc. was organized on May 31, 1949 by Hyman H. Zarett and Sylvia Lane, who each invested the sum of $3,000.00 and received 50 shares of stock in said corporation. In 1950 Sylvia Lane sold her 50 shares of stock for $43,630.00 to Hyman H. Zarett, Isidore Lehrer and Jack Spiegel. Each of the three individual purchasers received 16 2/3 shares of the 50 shares of stock of the corporation from Slyvia Lane and each of the individuals paid to Sylvia Lane the amount of $14,543.33. In addition, Hyman H. Zarett surrendered 33 1/3 shares of his stock to the corporation which in turn issued capital stock consisting of 16 2/3 shares to Isidore Lehrer and 16 2/3 shares to Jack Spiegel. Each of the said transferees paid into the corporation the sum of $3,500.00. After the completion of these transactions, Zarett, Lehrer and Spiegel each owned 1/3 of the capital stock in Bayshore Gardens, Inc. Hyman H. Zarett did not receive any monetary contribution from Isidore Lehrer and Jack Spiegel for the transfer of his aforementioned shares of stock.

Bayshore Gardens, Inc. was formed for the purpose of building an apartment project. The project was financed by a mortgage insured by the Federal Housing Administration. The proceeds of the mortgage exceeded the cost of construction of the property by $246,268.99. The project was completed in 1950. The fixed assets of the corporation were written up on the books as follows: Land, $68,020.41; Building, $242,146.58; Capital Surplus, $310,166.99. A cash distribution of $50,000.00 was made on December 29, 1950 to each of the stockholders and in 1951 these stockholders each received a cash distribution of $31,000.00.

The taxpayers originally reported the distribution both on the Federal and State returns as a capital gain. The Income Tax Bureau on March 14, 1955 issued assessments against the taxpayer Hyman H. Zarett (Assessment Nos. AA-837926 and AA-837927) and Isidore Lehrer and his wife (Assessment Nos. AA-837928 and AA-837929) for the years 1950 and 1951 holding the distribution received from Bayshore Gardens, Inc. to be normal income rather than capital gain and imposed additional tax at normal tax rates on the full amount of the distributions received, crediting the taxpayers with the amounts of the tax computed by them at capital gain tax rates.

The taxpayers entered into an agreement with the Appellate Division of the Internal Revenue Service whereby the cash distributions in excess of the cost basis of the stock were to be treated as ordinary income under Section 117(m) of the Internal Revenue Code of 1939 dealing with collapsible corporations. (See Internal Revenue Cumulative Bulletin, 1957-2, Rev. Rul. 57-357, page 900, *et seq*.) This treatment was accepted by the Appellate Division of the Internal Revenue Service and computed as follows:

	HYMAN H. ZARETT		ISIDORE LEHRER	
	1950	1951	1950	1951
Distribution	$50,000.00	$31,000.00	$50,000.00	$31,000.00
Ordinary Dividends --1/3 of earnings & profits of Bayshore Gardens, Inc.	5,732.33	11,032.85	5,732.33	11,032.85
Balance	$44,267.67	$19,967.15	$44,267.67	$19,967.15
Cost Basis of Stock	17,543.33	------	18,043.33	-------
Gain-normal income 117(m)	$26,724.34	$19,967.15	$26,224.34	$19,967.15
Ordinary Dividends	5,732.33	11,032.85	5,732.33	11,032.85
Subject to normal income tax	$32,456.67	$31,000.00	$31,956.67	$31,000.00

In a leading case dealing with collapsible corporations, Pomponio v. Commissioner of Internal Revenue, (288 F. 2d 827), the Court quoting from a decision in the case of Burge v. Commissioner, (253 F. 2d 765) at page 767, said:

> " * * * The word 'collapsible' considered apart from its context would be somewhat misleading; but there can be no question, we think as to what Congress meant by a 'collapsible corporation' as used in the statute. That term was used to describe a corporation which is made use of to give the appearance of a long term investment to what is in reality a mere venture or project in manufacture, production or construction of property, with the view of making the gains from the venture or project taxable, not as ordinary income, as they should be taxed, but as long term capital gains. Because the basic type of transaction which gave rise to the legislation involved the use of temporary corporations which were dissolved and their proceeds distributed after tax avoidance had been accomplished, the term 'collapsible corporation' was employed to describe the corporations used for this form of tax avoidance; but the statute was drawn in broad general terms to reach the abuse which had arisen, whatever form it might take."

It is to be noted that Section 117(m) of the 1939 Code was added by the Act of September 23, 1950 to get normal tax treatment from distributions made by collapsible corporations. New York State did not adopt the provisions of Section 117(m).

The attorney for the taxpayer submitted an offer in settlement on the same basis as the settlement with the Internal Revenue Service but the offer was rejected by the Income Tax Bureau.

In Marx v. Bragalini, 6 NY 2d 322, the facts were as follows: In 1942 a corporation purchased an apartment house for approximately $1,745,000.00 and gave a mortgage for $1,682,000.00. In 1950, by reason of the appreciation in the value of the real estate, the corporation obtained a new mortgage of $2,000,000.00 and paid off the existing one. As a result of this transaction, the corporation was left with net proceeds of $824,810.60. In 1950 it made a distribution to stockholders of $735,000.00. Of this amount petitioner, a stockholder, received $389,588.89. At the close of its fiscal year, January, 1951, the company's accumulated earnings were $77,911.31, which equalled approximately 10.6% of the distribution. In his 1950 New York personal income tax return, petitioner included $41,296.42, representing 10.6% of the total distribution to him in gross income as a dividend subject to tax as ordinary income. He reported the balance of the distribution, $348,292.47, in the capital gains schedule of his return, treating $346,117.85

thereof (the amount equivalent to the cost of his stock) as a return of capital to be applied against the basis of his stock and reporting the excess of $2,174.62 as capital gain. The Federal Internal Revenue Service approved the petitioner's treatment of the distribution. However, the Income Tax Bureau did not. It treated the entire distribution as ordinary income and assessed additional taxes against the petitioner. The State Tax Commission agreed with the Bureau's decision. The petitioner commenced an Article 78 proceeding and following the Appellate Division's non-unanimous confirmation of the determination appealed to the Court of Appeals, as of right. The order of the Appellate Division was reversed and the determination of the Tax Commission annulled.

The Court held that a cash distribution by a corporation to its shareholder from unrealized appreciation in the value of its assets is not taxable income as a dividend to a receiving shareholder under Article 16 of the Tax Law to the extent that it does not exceed the cost or basis of his stock in the distributing corporation. Lynch v. Turrish, 247 U.S. 221.

In Uris v. Murphy, 23 A D 2d 948, it was held that a cash distribution by a corporation to its shareholders from unrealized appreciation in the value of its assets is to be treated as a capital gain and not as ordinary income to receiving shareholders under Article 16 of the Tax Law, to the extent that the distribution exceeds the cost or basis of the shareholders' stock.

I am, therefore, of the opinion that the assessments should be modified by imposition of additional normal taxes only on the dividends out of earnings and profits distributed to the taxpayers for the years 1950 and 1951 in the respective amounts of $5,732.33 and $11,032.85. I am of the further opinion that the capital gains realized by Zarett and Lehrer on the distributions received from Bayshore Gardens, Inc. amounted to $26,724.34 and $26,224.34, respectively for 1950 and $19,967.15, each, for 1951.

For the reasons stated above, I recommend that the determinations in the above matters be substantially in the forms submitted herewith.

Solomon Sies
Hearing Officer

SS:ww/je

June 2, 1970

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

ISIDORE LEHRER and
HELEN LEHRER, his wife

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS 1950 and 1951.

DETERMINATION

The taxpayers, Isidore Lehrer and Helen Lehrer, filed timely applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1950 and 1951. The applications having been denied, the taxpayers filed a timely demand for a hearing. A hearing was held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York before Solomon Sies, Hearing Officer, of the Department of Taxation and Finance on the 21st day of October, 1963, at which hearing the taxpayers were represented by Kleiger & Kleiger, Esqs., 250 Broadway, New York City, New York by Frank T. Kleiger, Esq. of Counsel. The record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Bayshore Gardens, Inc. was organized under the laws of State of New York on May 31, 1949 by Hyman H. Zarett and Sylvia Lane, who each invested the sum of $3,000.00 and received 50 shares each of the capital stock of said corporation. In 1950 Sylvia Lane sold her 50 shares of stock for $43,630.00 to Hyman H. Zarett, Isidore Lehrer and Jack Spiegel. Each of the individual purchasers received 16 2/3 shares of the 50 shares of stock in the corporation owned by Sylvia Lane and each of the individuals paid to Sylvia Lane the sum of $14,543.33. In addition, Hyman H. Zarett surrendered 33 1/3 shares of his stock to the corporation and the corporation

issued capital stock consisting of 16 2/3 shares to Isidore Lehrer and 16 2/3 shares to Jack Spiegel. Each of the said transferees paid the corporation the sum of $3,500.00. Zarett received no consideration for the surrender of his 33 1/3 shares to the corporation. After the completion of these transactions, Zarett, Lehrer and Spiegel each owned 1/3 of the shares of the capital stock of Bayshore Gardens, Inc.

(2) Bayshore Gardens, Inc. was formed for the purpose of building an apartment project known as Bayshore Gardens. The project was financed by a mortgage insured by the Federal Housing Administration. The proceeds of the mortgage exceeded the cost of construction of the property by $246,268.99. The project was completed in 1950. The fixed assets of the corporation were written up on its books as follows: Land, $68,020.41; building, $242,146.58; Capital Surplus, $310,166.99.

(3) A cash distribution of $50,000.00 was made by Bayshore Gardens, Inc. on December 29, 1950 to each of the corporations' three stockholders. In 1951 these stockholders each received from the aforementioned corporations a cash distribution of $31,000.00. These cash distributions included the taxpayers' share of ordinary dividends (1/3 of earnings and profits of Bayshore Gardens, Inc.) of $5,732.33 for 1950 and $11,032.85 for 1951. (Min. of Hrg., p. 28).

(4) For 1950, the taxpayer reported in addition to salary income partnership income from L. R. Z. Realty Co. in the amount of $4,083.55. He also reported net capital gain in the amount of $31,956.67 based on the difference between the cash distribution received from Bayshore Gardens, Inc. in the amount of $50,000.00 and the cost basis of the stock in the amount of $18,043.33 predicated on the $14,543.33 paid to Sylvia Lane and $3,500.00 paid to the corporation for his shares of the stock. For 1951 in addition to other income, the taxpayer reported distributive share of partnership income (L. R. Z. Realty Co.) in the amount of $4,065.56 and capital

gains of $66,886.35 which included the cash distribution received by him from Bayshore Gardens, Inc. in the amount of $31,000.00.

(5) On March 14, 1955, the Department of Taxation & Finance made additional assessments against the taxpayers for the years 1950 and 1951 (Assessment Nos. AA837928 and AA837929, respectively) holding the entire amount of the cash distributions from Bayshore Gardens, Inc. to be subject to normal tax rather than capital gain tax. For 1950 the distributive share from L. R. Z. Realty was increased in the amount of $48.75. Credits were given on the assessments for capital gain taxes paid for the years 1950 and 1951. Additional normal taxes were imposed for 1950 and 1951 in the amounts of $2,258.97 and $976.50, respectively. The taxpayers are only contesting those portions of the assessments which treated the entire distributions from Bayshore Gardens, Inc. as additional ordinary or normal income.

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

DETERMINES:

(A) Of the $50,000.00 cash distribution received by the taxpayer, Isidore Lehrer, from Bayshore Gardens, Inc. in 1950, $5,732.33 included therein represented his share of ordinary dividends out of the earnings and profits of the aforementioned corporation. Of the $31,000.00 cash distribution received by the taxpayer from Bayshore Gardens, Inc. in 1951, $11,032.85 included therein represented his share of ordinary dividends out of the earnings and profits of the aforementioned corporation.

(B) The unrealized appreciation in value of the assets of Bayshore Gardens, Inc. did not increase the corporations's earnings or profits in accordance with the provisions of Section 350, subd. 8, Article 16 of the Tax Law then in effect. The cash distribution other than the ordinary dividends received by the taxpayer did not constitute "gross income" subject to normal tax as defined by

Section 359, subd. 1, Article 16 of the Tax Law, then in effect.

(C) The taxpayer, Isidore Lehrer, was entitled to treat that portion of the distribution in 1950 which did not represent ordinary dividends not in excess of the cost or basis of his stock as a return of capital in the amount of $18,043.33 as more fully set forth in Finding (4) above.

(D) The cash distributions received from Bayshore Gardens, Inc. to the extent that they exceeded the cost or basis of the taxpayer's stock, namely $26,224.34 for 1950 and $19,967.15 for 1951, constituted capital gains subject to capital gain tax.

(E) Accordingly, the assessments for 1950 and 1951 are hereby modified as follows:

		1950		1951
Add'l. Normal Income on Assessment		$50,000.00		$31,000.00
Less Amt. now considered capital gain		44,267.67		19,967.15
Distribution properly taxable as normal income		5,732.33		11,032.85
Add'l. Partnership Income as per Assessment		49.19		
Increase in Balance Subject to Normal Tax Corrected		5,781.52		
Add'l. Normal Tax		404.71		772.30
Less 10%		40.47		77.23
Add'l. Normal Tax Due		364.24		695.07
Reduction in Net Capital Gain	$5,732.33		$11,032.85	
Net Capital Gain Tax at 3 1/2%	200.63		386.15	
Less 10%	$ 20.06		38.62	
Net Capital Gain Tax considered overpayment		180.57		347.53
Net Add'l. Normal Tax Due		$ 183.67		$ 347.54

(F) Accordingly, the assessments issued against the taxpayers (Assessment Nos. AA837928 for 1950 and AA837929 for 1951) except as modified above are correct. The aforementioned assessments, as so modified, do not include any tax or other charge which could not have been lawfully demanded. The taxpayers' application for revision or refund with respect to the aforementioned assessments for

1950 and 1951, except as modified, are hereby denied.

DATED: Albany, New York on the 2nd day of July, , 1970.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

A. Bruce Manley

COMMISSIONER

Milton Koerner

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

HYMAN H. ZARETT

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS 1950 AND 1951.

DETERMINATION

The taxpayer, Hyman H. Zarett, filed timely applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1950 and 1951. The applications having been denied, the taxpayer filed a timely demand for a hearing. A hearing was held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance on the 21st day of October, 1963, at which hearing the taxpayer was represented by Kleiger & Kleiger, Esqs., 280 Broadway, New York City, New York by Frank T. Kleiger, Esq., of Counsel. The record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Bayshore Gardens, Inc. was organized under the laws of the State of New York on May 31, 1949 by Hyman H. Zarett and Sylvia Lane, who each invested the sum of $3,000.00 and received 50 shares each of the capital stock of said corporation. In 1950 Sylvia Lane sold her 50 shares of stock for $43,630.00 to Hyman H. Zarett, Isidore Lehrer and Jack Spiegel. Each of the individual purchasers received 16 2/3 shares of the 50 shares of stock in the corporation owned by Sylvia Lane and each of the individuals paid to Sylvia Lane the sum of $14,543.33. In addition, Hyman H. Zarett surrendered 33 1/3 shares of his stock to the corporation and the corporation issued capital stock consisting of 16 2/3 shares to

Isidore Lehrer and 16 2/3 shares to Jack Spiegel. Lehrer and Spiegel each paid the corporation the sum of $3,500.00. Zarett received no consideration for the transfer of his 33 1/2 shares to the corporation. After the completion of these transactions, Zarett, Lehrer and Spiegel each owned 1/3 of the shares of the capital stock of Bayshore Gardens, Inc.

(2) Bayshore Gardens, Inc. was formed for the purpose of building an apartment project known as Bayshore Gardens which project was financed by a mortgage insured by the Federal Housing Administration. The proceeds of the mortgage exceeded the cost of construction of the property by $246,268.99. The project was completed in December, 1950. The fixed assets of the corporation were written up on its books as follows: Land, $68,020.41; Building, $242,146.58; Capital Surplus, $310,166.99.

(3) A cash distribution of $50,000.00 was made by Bayshore Gardens, Inc. on December 29, 1950 to each of the corporations' three stockholders. In 1951 these stockholders each received from the aforementioned corporations a cash distribution of $31,000.00. These cash distributions included the taxpayer's share of ordinary dividends (1/3 of earnings and profits of Bayshore Gardens, Inc.) of $5,732.33 for 1950 and $11,032.85 for 1951. (Min. of Hrg., p. [illegible]).

(4) For 1950, the taxpayer in addition to salary income reported partnership income from L.R.Z. Realty Co. in the amount of $1,810.83. He also reported net capital gain of $32,456.67 based on the difference between the cash distribution of $50,000.00 received from Bayshore Gardens, Inc. and the cost basis of the stock in the amount of $17,543.33 predicated on the $3,000.00 originally paid by him for his shares of stock and the $14,543.33 paid by him to Sylvia Lane for a portion of her shares of stock. For 1951, in addition to other income, the taxpayer reported distributive share

of partnership income (L.R.Z. Realty Co.) in the amount of $1,802.85 and capital gains of $62,450.62 which included the cash distribution received by him from Bayshore Gardens, Inc. in the amount of $31,000.00.

(5) On March 14, 1955, the Department of Taxation and Finance made additional assessments against the taxpayer for the years 1950 and 1951 (Assessment Nos. AA837926 and AA837927, respectively) holding the entire amount of the cash distributions from Bayshore Gardens, Inc. to be subject to normal tax rather than capital gain tax. Assessment No. AA837927 for 1951 included Assessment No. AA804537 in the amount of $136.30 for the same year made on January 6, 1955 disallowing a deduction for the demolition of a building and increasing taxpayer's distributive share of income from L.R.Z. Realty Co. in the amount of $21.82. These adjustments were based on the returns filed by said partnership. Credits were given on the assessments for capital gain taxes paid for the years 1950 and 1951. Additional normal taxes were imposed for 1950 and 1951 in the amounts of $2,241.50 and $898.48 respectively. The taxpayer is only contesting those portions of the assessments which treated the entire distributions from Bayshore Gardens, Inc. as additional ordinary or normal income.

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

DETERMINES:

(A) Of the $50,000.00 cash distribution received by the taxpayer from Bayshore Gardens, Inc. in 1950, $5,732.33 included therein represented his share of ordinary dividends out of the earnings and profits of the aforementioned corporation. Of the $31,000.00 cash distribution received by the taxpayer from Bayshore Gardens, Inc. in 1951, $11,032.85 included therein represented his share of ordinary dividends out of the earnings and profits of the aforementioned corporation.

(B) The unrealized appreciation in value of the assets of Bayshore Gardens, Inc. did not increase the corporation's earnings or profits in accordance with the provisions of Section 350, subd. 8 of Article 16 of the Tax Law then in effect. The cash distribution other than the ordinary dividends received by the taxpayer did not constitute "gross income" subject to normal tax as defined by Section 359, subd. 1 of Article 16 of the Tax Law, then in effect.

(C) The taxpayer was entitled to treat that portion of the distribution in 1950 which did not represent ordinary dividends not in excess of the cost or basis of his stock as a return of capital in the amount of $17,543.33 as more fully set forth in Finding (4) above.

(D) The cash distributions received from Bayshore Gardens, Inc. to the extent that they exceeded the cost or basis of the taxpayer's stock, namely $26,724.34 for 1950 and $19,967.15 for 1951, constituted capital gains subject to capital gain tax.

(E) Accordingly, the assessments for 1950 and 1951 are hereby modified as follows:

		1950		1951
Add'l. Normal Income per Assess. #AA837926		$50,000.00		31,000.00
Amt. considered to be capital gain		44,267.67		19,967.15
Add'l. Normal Income Corrected		$ 5,732.33		11,032.85
Add'l. Contributions Allowed				1,132.52
Balance				9,900.33
Taxable Balance per Assess. #AA804537				8,259.43
Adjustable Taxable Balance				$18,159.76
Increase in partnership income		21.81		
Total Corrected		5,754.14		
Normal Tax		402.79		1,021.18
Less 10% reduction		40.28		102.19
Normal Tax Due		362.51		[illegible]
Credit per Assess. #AA804537				[illegible]
Add'l. Normal Tax Due		362.51		[illegible]
Amt. Considered				
Capital Gain	44,267.67		19,967.15	
Less Basis (cost)	17,543.33			
Net Capital Gain	26,724.34		19,967.15	
Capital Gain Tax	820.35		598.85	
Less 10% Reduction	82.04		[illegible]	
Net Capital Gain Tax	738.31		[illegible]	
Capital Gain Tax Paid	909.88		976.50	
Overpayment Cap. Gain Tax Applied to Normal Tax Due		171.57		[illegible]
Net Add'l. Normal Tax Due		$190.94		[illegible]

(F) Accordingly, the assessments issued against the taxpayer (Assessment No. AA-837927 for the year 1951, and Assessment No. AA-837926 for the year 1950) except as modified above are correct. The aforementioned assessments, as so modified, do not include any tax or other charge which could not have been lawfully demanded. The taxpayer's applications for revision or refund, with respect to the aforementioned assessments for 1950 and 1951, except as modified, are hereby denied.

DATED: Albany, New York on the 2nd day of July, 1970.

STATE TAX COMMISSION

/s/ Norman Gallman
COMMISSIONER

/s/ A. Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER