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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MARION HELLER

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

Rae Zimmerman, 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 27th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Marion Heller

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mrs. Marion Heller  
112 Central Park South  
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

27th day of March, 1972.

Maitha Furaw

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

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Tax Law for the (Year(s)) 1959

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OF NOTICE OF DECISION  
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State of New York  
County of Albany

Rae Zimmerman, 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 27th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon William I. Abramson

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. William Abramson  
c/o Clarence Rainess & Co.  
570 Seventh Avenue

New York, N.Y. 10018  
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

27th day of March, 1972.

Martha Fennell

Rae Zimmerman



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

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 27, 1972**

**Mrs. Marion Heller**  
**112 Central Park South**  
**New York, New York**

**Dear Mrs. Heller:**

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,

**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :

of :

MARION HELLER :

DETERMINATION

for Revision or Refund of Personal :  
Income Taxes under Article 16 of the  
Tax Law for the year 1959 :

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Applicant, Marion Heller, has filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959. (File Number AB004445) A formal hearing was held before Alfred Rubinstein, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 27, 1967, at 9:00 A.M. Clarence Raines, by William Abramson, C.P.A. appeared for applicant.

FINDINGS OF FACT

1. Applicant, Marion Heller, filed a New York State Income Tax Resident Return for the year 1959.

2. On March 27, 1962, the Income Tax Bureau issued a Notice of Additional Assessment against applicant, Marion Heller, disallowing for the year 1959 a deduction by her from normal income of \$81,108.63 claimed as a bad debt loss on a note receivable from New Castle Motel, Inc., and allowing said loss as a capital loss deductible from net capital gain upon the grounds that the amounts advanced by her to the corporation represented a capital investment rather than a true loan and that the capitalization of the corporation was insufficient for its operations and accordingly assessed additional tax of \$2,489.13.

3. Applicant, Marion Heller, deducted on her 1959 United States Individual Income Tax Return, as a short-term capital loss, the loss in the amount of \$81,108.63 sustained by her on a note due from New Castle Motor Lodge, Inc. The portion of this loss not utilized on this return was carried forward to subsequent years.

4. The New Castle Motel, Inc., was organized in 1950, with the following stockholders:

	<u>Amount Paid</u>	<u>No. of Shares</u>
Lawrence Germain	\$ 100.00	1
Doris Germain	400.00	4
Marion Heller	100.00	1
Rita Polsky	400.00	4
	<u>\$1,000.00</u>	10

5. During the years 1950 and 1951, the Applicant, Marion Heller, advanced the sum of \$130,000 to New Castle Motor Lodge, Inc., as unsecured loans. The advances were made as follows:

January 13, 1950	\$ 75,000.00
April 7, 1950	6,500.00
June 13, 1950	13,500.00
August 2, 1950	10,000.00
November 20, 1950	15,000.00
January 22, 1951	10,000.00
	<u>\$130,000.00</u>

6. Lawrence Germain advanced moneys to the corporation as follows:

1950, Apparently as a down-	
payment on the land	\$ 4,000.00
January 13, 1950	25,000.00
May 10, 1951	1,000.00
	<u>\$30,000.00</u>

7. In June, 1953, as part of a buy-out of the stock interest of Lawrence Germain, the applicant, Marion Heller, paid Lawrence Germain \$30,000 for the assignment of a promissory note in the amount of \$29,000 from New Castle Motor Lodge, Inc., payable to Lawrence Germain, and a \$1,000 obligation of New Castle Motor Lodge, Inc. to Lawrence Germain.

Applicant, Marion Heller, in May and June, 1953, acquired five shares of the capital stock of the New Castle Motor Lodge, Inc., from Lawrence Germain and Doris Germain for the sum of \$70,000.

8. Thus, the total amount due to applicant, Marion Heller, as loans from the New Castle Motor Lodge, Inc., was \$160,000, consisting of the direct advances of \$130,000 and assigned loans of \$30,000.

9. In August, 1953, applicant, Marion Heller, Rita Polsky, (her daughter and a stockholder of the corporation) and New Castle Motor Lodge, Inc., entered into an agreement whereby the corporation agreed to make annual repayments of \$5,000 each against the loans.

10. During this period from 1953 to 1959, there was actually repaid the sum of \$43,250, as compared to \$25,000 called for under the agreement.

11. Applicant, Marion Heller, agreed to bequeath, by will, to Rita Polsky, or if she predeceased Marion Heller, to Polsky's children, the balance of the loans, if any, due from New Castle Motor Lodge, Inc., which remained unpaid at the time of her death.

12. There was no fixed due date, rate of repayment or rate of interest on said loans.

13. By December 21, 1959, the amounts due to applicant, Marion Heller, by the New Castle Motor Lodge, Inc., was reduced to \$116,750.00.

14. On December 21, 1959, the primary assets of the New Castle Motor Lodge, Inc., was sold for \$165,000, subject to various liabilities, totalling \$140,000.

15. After the sale, the total assets of the corporation, after giving effect to the mortgages, were \$40,014.03 against which there liabilities of \$4,372.66 (excluding the liabilities to applicant, Marion Heller). These net assets of \$35,641.37 were turned over to her in payment of liabilities to her of \$116,750. Thus, she sustained a bad debt loss of \$81,108.63.

16. The reasons for the sale of the motel at this reduced price, was that it had declined in value due to the completion of a new highway which took traffic to and from the Delaware Memorial Bridge away from the motel.

17. Prior to the completion of the new highway, all traffic to and from the Delaware Memorial Bridge used the Dupont Highway (which passed in front of the New Castle Motor Lodge, Inc.) to connect with the Atlantic Highway and the Baltimore-Washington Highway.

18. Another factor which contributed to the decline in value of the motel, was that just prior to the completion of the new highway, access roads to the motel on the Dupont Highway were closed by the authorities for about two years. This limited the drawing power of the motel to traffic on its own side of the highway.

CONCLUSIONS OF LAW

A. That in view of the fact that the ratio of loans to capital investment was 160:1., that material amounts of capital were not invested in stock, that the indebtedness was unsecured, that the loans had no fixed due dates, dates of repayment, or rates of interest, and that the transactions were interfamily and not at arms length, therefore the advances made by applicant, Marion Heller, and by Lawrence Germain (which were acquired later by her) to New Castle Motor Lodge, Inc., were in reality contributions to capital and not loans.

B. That therefore the losses sustained by applicant, Marion Heller, on the notes due to her from New Castle Motor Lodge constituted a capital loss deductible from net capital gain and not a bad debt loss deductible from normal income.

C. That the application of Marion Heller is denied and the notice of additional assessment dated March 27, 1962, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

*March 27, 1972*

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Mauley*  
\_\_\_\_\_  
COMMISSIONER

*Melvin Korman*  
\_\_\_\_\_  
COMMISSIONER