

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
IRVING L. BERNSTEIN, HERMAN : AFFIDAVIT OF MAILING  
LAZARUS, GEORGE HAMILTON :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 16 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1959

State of New York  
County of Albany

Marsina Donnini , 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 15 day of July , 1977 , she served the within  
NOTICE OF DETERMINATION by ~~(certified)~~ mail upon Irving L.  
Bernstein ~~(representative of the)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Irving L. Bernstein  
10 Cypress Drive  
Woodbury, 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 Postal Service within the State of New York.

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

15 day of July , 1977.

Marsina Donnini

Janet Mac

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
IRVING L. BERNSTEIN, HERMAN  
LAZARUS, GEORGE HAMILTON

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Taxes under Article(s) 16 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ 1959 :

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15 day of July, 19 77, she served the within  
NOTICE OF DETERMINATION by (~~certified~~) mail upon Herman Lazarus

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Herman Lazarus  
12 Cypress Drive  
Woodbury, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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Sworn to before me this

15 day of July, 1977.

*Marsina L. Donnini*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

IRVING L. BERNSTEIN, HERMAN  
LAZARUS, GEORGE HAMILTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
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1959

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15 day of July, 1977, she served the within  
NOTICE OF DETERMINATION by (certified) mail upon George Hamilton

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. George Hamilton  
5242 North 20th Street  
Phoenix Arizona 85016

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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15 day of July, 1977





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
IRVING L. BERNSTEIN, HERMAN : AFFIDAVIT OF MAILING  
LAZARUS, GEORGE HAMILTON :  
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1959

State of New York  
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NOTICE OF DETERMINATION by ~~(representative)~~ mail upon Aaron Shapiro, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Aaron Shapiro, CPA  
1180 Avenue of the Americas  
New York, New York 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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the United States Postal Service within the State of New York.

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last known address of the (representative of the) petitioner.

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15 day of July, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

July 15, 1977

**Mr. Irving L. Bernstein**  
**10 Cypress Drive**  
**Woodbury, New York**

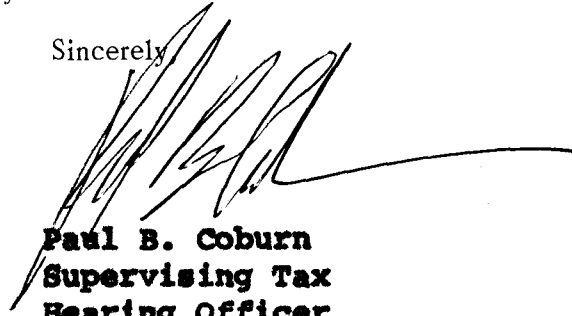
**Dear Mr. Bernstein:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **375** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **90 days** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely



**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

July 15, 1977

**Mr. Herman Lazarus**  
**12 Cypress Drive**  
**Woodbury, New York**

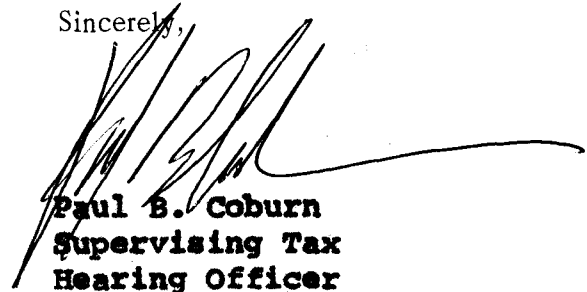
**Dear Mr. Lazarus:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **375** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **90 days** from the date of this notice.

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Sincerely,



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**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**July 15, 1977**

**Mr. George Hamilton  
5242 North 20th Street  
Phoenix, Arizona 85016**

**Dear Mr. Hamilton:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **375** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **90 days** from the date of this notice.

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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
IRVING L. BERNSTEIN :  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :

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In the Matter of the Application :  
of :  
HERMAN LAZARUS : DETERMINATION  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :

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In the Matter of the Application :  
of :  
GEORGE HAMILTON :  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :

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Irving L. Bernstein, residing at 10 Cypress Drive, Woodbury,  
New York, filed an application for revision or for refund of personal  
income tax under Article 16 of the Tax Law for the year 1959.



Herman Lazarus, residing at 12 Cypress Drive, Woodbury, New York, filed an application for revision or for refund of personal income tax under Article 16 of the Tax Law for the year 1959.

George Hamilton, residing at 5242 North 20th Street, Phoenix, Arizona 85016, filed an application for revision or for refund of personal income tax under Article 16 of the Tax Law for the year 1959. (File Nos. 01895, 01894 and 01896).

The above-named applicants consented to a combined hearing, since mutual questions of fact and law were involved.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 24, 1974 at 1:15 P.M. The applicants appeared by Aaron Shapiro, CPA. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

#### ISSUES

I. Whether the assessments against the applicants were timely issued.

II. Whether the disallowance for amortization of patents was correct.

III. Whether the transfer of assets of the partnership, in which the applicants were general partners, to a controlled

corporation constituted a nonrecognized loss under section 354(3) of the Tax Law.

IV. Whether Article 16 permits a net operating-loss carryback from a Federal conformity year.

FINDINGS OF FACT

1. The applicant, Irving L. Bernstein, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4593) against the applicant in the amount of \$6,307.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$63,076.78. The applicant filed a timely application for revision or refund on February 18, 1970. The Income Tax Bureau issued a Notice of Denial of the applicant's application for revision or for refund. The applicant, Irving L. Bernstein, filed a timely demand for a hearing.

2. The applicant, Herman Lazarus, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4594) against the applicant

in the amount of \$6,307.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$63,076.78. The applicant filed a timely application for revision or refund. On February 18, 1970, the Income Tax Bureau issued a denial of the application for revision or for refund. The applicant, Herman Lazarus, filed a timely demand for a hearing.

3. The applicant, George Hamilton, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4595) against said applicant in the amount of \$6,207.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$62,076.80. The Income Tax Bureau applied a refund for 1961 due to the applicant in the amount of \$2,321.83, in reduction of the assessment. The applicant filed a timely application for revision or for refund of the assessment. On February 18, 1970, the Income Tax Bureau issued a Notice of Denial of the application for revision or for refund. The applicant, George Hamilton, filed a timely demand for a hearing.

4. Irving L. Bernstein, Herman Lazarus, George Hamilton and others were partners of International Associates, Blackton Associates, H. Greenwald Company and Island Factors, all New York partnerships. International Associates owned shares of stock in Coburn Credit Co., Inc., a New York corporation.

5. On October 1, 1959, the partnership, International Associates transferred to Coburn Credit Co., Inc., assets and liabilities including discount expense of \$221,651.73, in exchange for loans and an investment in 25/73 Jamaica Avenue, and Herman Lazarus Realty. Prior to the transfer, and more particularly on September 4, 1959, International Associates owned 72 shares or 75% of the stock of Coburn Credit Co., Inc.

6. The Internal Revenue Service audited the applicant's U.S. partnership return of income of International Associates for 1959, and on December 22, 1961, it issued notices of deficiency against the individual partners disallowing:

- (a) Amortization of patents totalling \$66,666.67,
- (b) Net loss of Groco Associates Inc. \$51,157.79, and
- (c) Discounts of \$221,651.73.

The partnership had reported a loss of \$201,273.61, so that additional income was \$138,202.58, less deductions for bad debts in the amount of \$114,313.95. This resulted in corrected taxable income of \$23,888.63. The applicants Bernstein, Lazarus and

Hamilton, were each charged with additional ordinary income from International Associates of \$3,412.66. The applicants filed claims for refund. Revised deficiencies were asserted against the applicants for the years 1959 and 1961 on October 15, 1964, and they were overassessed for 1958. The applicants filed a petition with the United States Tax Court.

7. On or about June 30, 1965, the Tax Court rendered a final determination based upon a stipulation of the applicants, consenting to the imposition of additional partnership income due for 1959, knowing that losses incurred in 1960 on essentially the same partnerships would result in a net operating loss. This would eliminate any taxable income in 1959 after giving effect to the carryback.

8. The applicants did not file any notices of Federal changes with the Income Tax Bureau as required under section 367(2), Article 16 of the Tax Law, then in effect.

9. On its Notice of Denial, the Income Tax Bureau cancelled a portion of the assessments to the extent of \$33.22 each, on the ground that the partnership, H. Greenwald Company, did not deduct unincorporated business tax on its New York State return.

10. The applicants contend that the assessments were not issued within the statutory time period and are, therefore, invalid. They also contend that they are entitled to offset

their 1960 net operating loss against the 1959 operating loss. They further contend that the loss of \$221,202.58 which was disallowed by IRS, was in accordance with section 267(b) and section 351(a) of the Internal Revenue Code, pertaining to non-recognition of gain or loss to a controlled corporation, and that section 354(3) of Article 16 of the New York State Tax Law does not apply.

CONCLUSIONS OF LAW

A. That since the applicants did not file notices of Federal changes (IT 115's), the assessments could be issued at any time in accordance with the provisions of section 367(2) of the Tax Law.

B. That the disallowance of the patent amortization was correct, in accordance with the Regulations under Article 16 of the Tax Law then in effect (20 NYCRR 253.41).

C. That the transfer of the assets of the partnership International Associates to Coburn Credit Co., Inc. constituted a nonrecognized loss within the intent and meaning of section 354(3) of Article 16 of the Tax Law and 20 NYCRR 267.17, then in effect.

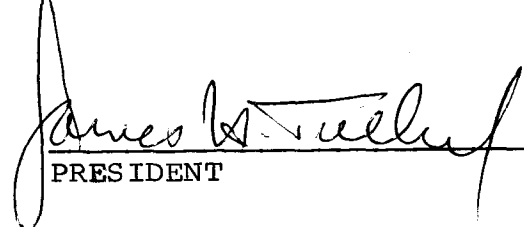
D. That a net operating-loss carryback from 1960, a conformity year to 1959 (a non-conformity year), is not permitted under Article 16 of the Tax Law then in effect.

E. That the applications of Irving L. Bernstein,  
Herman Lazarus and George Hamilton be and the same are  
hereby denied.

DATED: Albany, New York

July 15, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

p1

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

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Mr. George Hamilton  
5242 North 20th Street  
Phoenix, Arizona 85016

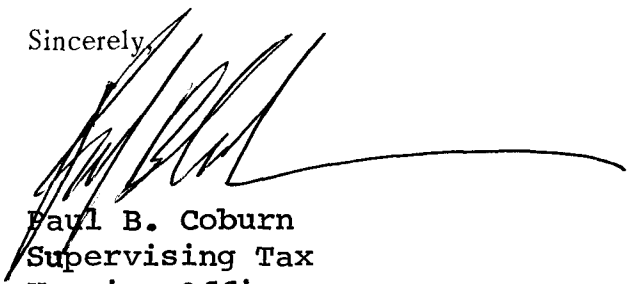
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STATE OF NEW YORK

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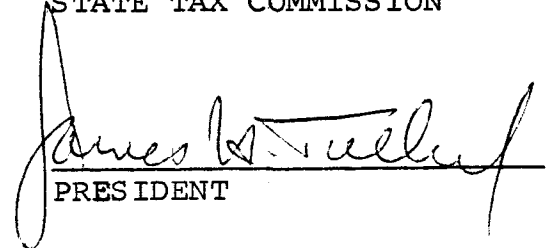
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DATED: Albany, New York

July 15, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



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STATE OF NEW YORK

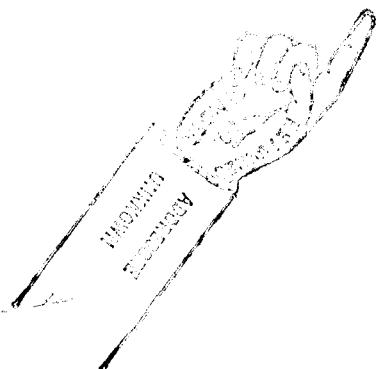
Department of Taxation and Finance

TAX APPEALS BUREAU

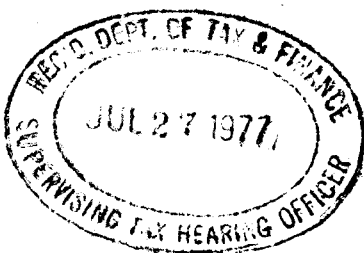
STATE CAMPUS

ALBANY, N. Y. 12227

S



Mr. George Hamilton  
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Phoenix, Arizona 85016





STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

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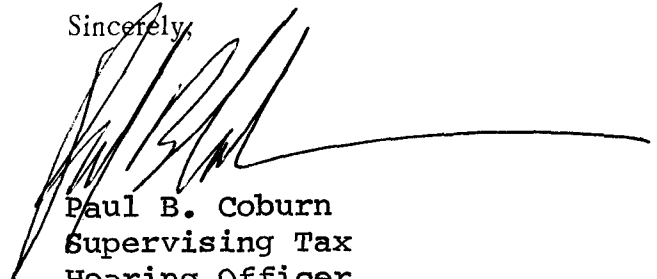
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You have now exhausted your right of review at the administrative level. Pursuant to section(s) **375** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **90 days** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



Paul B. Coburn  
Supervising Tax  
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
IRVING L. BERNSTEIN :  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :  
:

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In the Matter of the Application :  
of :  
HERMAN LAZARUS :  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :  
:

DETERMINATION

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In the Matter of the Application :  
of :  
GEORGE HAMILTON :  
for Revision or for Refund of Personal :  
Income Tax under Article 16 of the Tax :  
Law for the Year 1959. :  
:

Irving L. Bernstein, residing at 10 Cypress Drive, Woodbury,  
New York, filed an application for revision or for refund of personal  
income tax under Article 16 of the Tax Law for the year 1959.

Herman Lazarus, residing at 12 Cypress Drive, Woodbury, New York, filed an application for revision or for refund of personal income tax under Article 16 of the Tax Law for the year 1959.

George Hamilton, residing at 5242 North 20th Street, Phoenix, Arizona 85016, filed an application for revision or for refund of personal income tax under Article 16 of the Tax Law for the year 1959. (File Nos. 01895, 01894 and 01896).

The above-named applicants consented to a combined hearing, since mutual questions of fact and law were involved.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 24, 1974 at 1:15 P.M. The applicants appeared by Aaron Shapiro, CPA. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

#### ISSUES

I. Whether the assessments against the applicants were timely issued.

II. Whether the disallowance for amortization of patents was correct.

III. Whether the transfer of assets of the partnership, in which the applicants were general partners, to a controlled

corporation constituted a nonrecognized loss under section 354(3) of the Tax Law.

IV. Whether Article 16 permits a net operating-loss carryback from a Federal conformity year.

FINDINGS OF FACT

1. The applicant, Irving L. Bernstein, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4593) against the applicant in the amount of \$6,307.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$63,076.78. The applicant filed a timely application for revision or refund on February 18, 1970. The Income Tax Bureau issued a Notice of Denial of the applicant's application for revision or for refund. The applicant, Irving L. Bernstein, filed a timely demand for a hearing.

2. The applicant, Herman Lazarus, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4594) against the applicant

in the amount of \$6,307.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$63,076.78. The applicant filed a timely application for revision or refund. On February 18, 1970, the Income Tax Bureau issued a denial of the application for revision or for refund. The applicant, Herman Lazarus, filed a timely demand for a hearing.

3. The applicant, George Hamilton, filed a resident New York State personal income tax return for the year 1959, in which he deducted his share of certain partnership losses. On April 14, 1969, the Income Tax Bureau issued a notice of additional assessment of income tax (assessment No. FA4595) against said applicant in the amount of \$6,207.68, so as to conform with the findings of the Internal Revenue Service which disclosed additional income on Federal audit of \$62,076.80. The Income Tax Bureau applied a refund for 1961 due to the applicant in the amount of \$2,321.83, in reduction of the assessment. The applicant filed a timely application for revision or for refund of the assessment. On February 18, 1970, the Income Tax Bureau issued a Notice of Denial of the application for revision or for refund. The applicant, George Hamilton, filed a timely demand for a hearing.

4. Irving L. Bernstein, Herman Lazarus, George Hamilton and others were partners of International Associates, Blackton Associates, H. Greenwald Company and Island Factors, all New York partnerships. International Associates owned shares of stock in Coburn Credit Co., Inc., a New York corporation.

5. On October 1, 1959, the partnership, International Associates transferred to Coburn Credit Co., Inc., assets and liabilities including discount expense of \$221,651.73, in exchange for loans and an investment in 25/73 Jamaica Avenue, and Herman Lazarus Realty. Prior to the transfer, and more particularly on September 4, 1959, International Associates owned 72 shares or 75% of the stock of Coburn Credit Co., Inc.

6. The Internal Revenue Service audited the applicant's U.S. partnership return of income of International Associates for 1959, and on December 22, 1961, it issued notices of deficiency against the individual partners disallowing:

- (a) Amortization of patents totalling \$66,666.67,
- (b) Net loss of Groco Associates Inc. \$51,157.79, and
- (c) Discounts of \$221,651.73.

The partnership had reported a loss of \$201,273.61, so that additional income was \$138,202.58, less deductions for bad debts in the amount of \$114,313.95. This resulted in corrected taxable income of \$23,888.63. The applicants Bernstein, Lazarus and

Hamilton, were each charged with additional ordinary income from International Associates of \$3,412.66. The applicants filed claims for refund. Revised deficiencies were asserted against the applicants for the years 1959 and 1961 on October 15, 1964, and they were overassessed for 1958. The applicants filed a petition with the United States Tax Court.

7. On or about June 30, 1965, the Tax Court rendered a final determination based upon a stipulation of the applicants, consenting to the imposition of additional partnership income due for 1959, knowing that losses incurred in 1960 on essentially the same partnerships would result in a net operating loss. This would eliminate any taxable income in 1959 after giving effect to the carryback.

8. The applicants did not file any notices of Federal changes with the Income Tax Bureau as required under section 367(2), Article 16 of the Tax Law, then in effect.

9. On its Notice of Denial, the Income Tax Bureau cancelled a portion of the assessments to the extent of \$33.22 each, on the ground that the partnership, H. Greenwald Company, did not deduct unincorporated business tax on its New York State return.

10. The applicants contend that the assessments were not issued within the statutory time period and are, therefore, invalid. They also contend that they are entitled to offset



their 1960 net operating loss against the 1959 operating loss. They further contend that the loss of \$221,202.58 which was disallowed by IRS, was in accordance with section 267(b) and section 351(a) of the Internal Revenue Code, pertaining to non-recognition of gain or loss to a controlled corporation, and that section 354(3) of Article 16 of the New York State Tax Law does not apply.

CONCLUSIONS OF LAW

A. That since the applicants did not file notices of Federal changes (IT 115's), the assessments could be issued at any time in accordance with the provisions of section 367(2) of the Tax Law.

B. That the disallowance of the patent amortization was correct, in accordance with the Regulations under Article 16 of the Tax Law then in effect (20 NYCRR 253.41).

C. That the transfer of the assets of the partnership International Associates to Coburn Credit Co., Inc. constituted a nonrecognized loss within the intent and meaning of section 354(3) of Article 16 of the Tax Law and 20 NYCRR 267.17, then in effect.

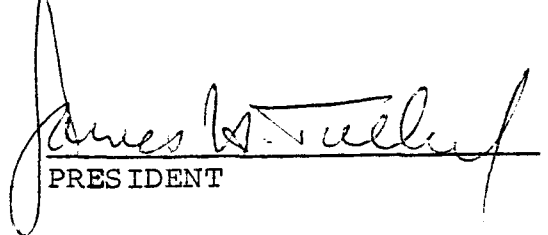
D. That a net operating-loss carryback from 1960, a conformity year to 1959 (a non-conformity year), is not permitted under Article 16 of the Tax Law then in effect.

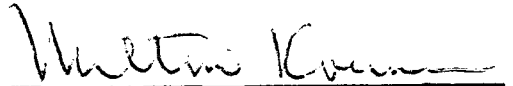
E. That the applications of Irving L. Bernstein,  
Herman Lazarus and George Hamilton be and the same are  
hereby denied.

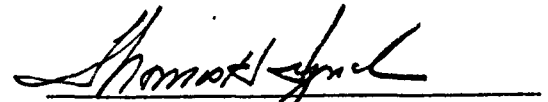
DATED: Albany, New York

July 15, 1977

STATE TAX COMMISSION

  
PRESIDENT

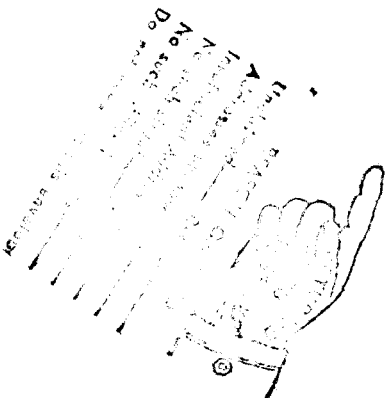
  
COMMISSIONER

  
COMMISSIONER

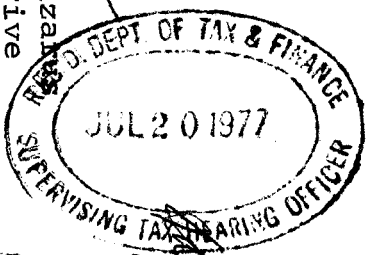
TA-26 (4-76) 25M **FORMAL HEARING**  
**STATE OF NEW YORK**

Department of Taxation and Finance  
**TAX APPEALS BUREAU**

STATE CAMPUS  
 ALBANY, N. Y. 12227



Mr. Herman Lazarek  
 12 Cypress Drive  
 Woodbury, New York



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