

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
Norman & Nita Shapiro :
for Redetermination of Deficiencies or for Refunds :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1970, 1976 and 1977 and New York :
City Nonresident Earnings Tax under Chapter 46, :
Title U of the Administrative Code of the City of :
New York for the Years 1976 and 1977. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Norman & Nita Shapiro, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman & Nita Shapiro
Tower #1, Apt. 2705
2201 S. Ocean Dr.
Hollywood, FL 33020

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of January, 1984.

David Parchuck

James A. [Signature]
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Norman & Nita Shapiro :
AFFIDAVIT OF MAILING
for Redetermination of Deficiencies or for :
Refunds of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1970, 1976 and 1977 :
and New York City Nonresident Earnings Tax under :
Chapter 46, Title U of the Administrative Code of :
the City of New York for the Years 1976 and 1977. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Eugene L. Boyars, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene L. Boyars
P.O. Box 1146
Selden, NY 117840946

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 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
18th day of January, 1984.

David Parchuck

James A. Magliaro
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Norman & Nita Shapiro
Tower #1, Apt. 2705
2201 S. Ocean Dr.
Hollywood, FL 33020

Dear Mr. & Mrs. Shapiro:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Eugene L. Boyars
P.O. Box 1146
Selden, NY 117840946
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
NORMAN SHAPIRO and NITA SHAPIRO : DECISION
for Redetermination of Deficiencies or for :
Refunds of Personal Income Tax under Article 22 :
of the Tax Law for the years 1970, 1976 and 1977:
and New York City Nonresident Earnings Tax under
Chapter 46, Title U of the Administrative Code :
of the City of New York for the Years 1976 and
1977. :

A formal hearing for tax year 1970 was commenced before Harvey Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 16, 1978 at 1:30 P.M. and continued sine die. Petitioners appeared by Eugene L. Boyars, C.P.A. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

On July 3, 1983, petitioners advised the State Tax Commission, in writing, that they desired to waive further formal hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUES

I. Whether petitioners can properly carryback their 1972 net operating loss to 1970.

II. Whether petitioners substantiated a \$13,691.00 loss claimed on their 1977 New York nonresident income tax return.

FINDINGS OF FACT

1. Petitioners, Norman Shapiro and Nita Shapiro, timely filed a joint New York State Income Tax Nonresident Return for 1970. On said return petitioners reported \$26,450.00 in partnership income and computed a tax of \$1,748.50. Said return resulted in an overpayment of \$5,751.50 which they requested to be credited to their 1971 estimated tax account. They timely filed joint New York State income tax nonresident returns for 1976 and 1977. On the 1976 income tax return petitioners reported business income of \$57,281.00 and partnership income of \$3,039.00. They also claimed a net operating loss carryover from 1975 of \$71,982.00. On the 1977 income tax return they reported business income of \$177,777.00 and a partnership loss of \$13,691.00. They also claimed the balance of the net operating loss carryover from 1975 of \$11,662.00. Petitioners did not file New York City nonresident earnings tax returns for 1976 and 1977.

2. On February 25, 1974, the Audit Division issued to petitioners a Notice of Deficiency for 1970 imposing personal income tax of \$19,731.15 and interest of \$3,386.65 for a total of \$23,117.80. A Statement of Audit Changes attached to the Notice of Deficiency stated that:

"Since the partnership of Motor Hotel Management Associates did not allocate its income and since the property from which the income was derived was wholly inside New York State, you as a member partner may not allocate your distributive share."

Petitioners' New York income was determined to be \$174,502.00. In computing the deficiency the Audit Division allowed, prior to allocation, expenses of \$14,803.00 and a standard deduction of \$1,000.00. According to petitioners' letter of January 14, 1974, petitioners reported total federal partnership income of \$363,227.00 less expenses of \$14,803.00.

3. On May 14, 1980 the Audit Division issued to petitioners a Notice of Deficiency imposing New York State personal income tax and New York City nonresident earnings tax as follows:

	<u>Deficiency</u>	<u>Penalty (685(c))</u>	<u>Interest</u>	<u>TOTAL</u>
NYS - 1976	\$3,229.57	-0-	\$ 845.33	\$ 4,074.90
NYC - 1976	224.42	\$10.18	58.74	293.34
NYS - 1977	3,683.59	-0-	651.07	4,334.66
NYC - 1977	1,155.55	52.39	204.24	1,412.18
TOTAL	<u>\$8,293.13</u>	<u>\$62.57</u>	<u>\$1,759.38</u>	<u>\$10,115.08</u>

A Statement of Audit Changes attached to the Notice of Deficiency stated in part that the net operating loss carryover from 1975 to 1976 was limited to \$25,794.00; that the net operating loss carryover from 1975 to 1977 was disallowed, since the carryover from 1975 was fully absorbed in 1976; that the loss claimed of \$13,691.00 was disallowed as unsubstantiated, and that the partnership income was subject to the New York City nonresident earnings tax.

4. On or about April 15, 1976 petitioners filed an amended New York State Income Tax Nonresident Return for 1970. They reported total income of \$174,502.00 and they deducted a net operating loss carryback from 1972 of \$43,845.00. They also reported \$10,073.00 of itemized deductions, prior to allocation. After deducting estimated tax payments of \$7,500.00, a balance due of \$8,429.00 was computed which petitioners paid on or about July 10, 1976.

5. The Audit Division did not allow the net operating loss as claimed on petitioners' 1970 amended New York income tax return, but rather required said

loss to be first applied to 1969. Petitioners' 1969 New York income was sufficient to absorb all of the 1972 net operating loss. Hence, none of said loss was applied to their 1970 tax year.

6. On August 30, 1977, petitioners agreed to the 100 percent allocation of the partnership income to New York for 1970. However, they disagreed with the Audit Division's disallowance of the 1972 net operating loss which petitioners claimed on their amended 1970 income tax return.

7. On July 24, 1980 a Withdrawal of Petition and Discontinuance of Case for 1970 was sent to petitioners showing a tax of \$4,206.50. Attached to the withdrawal was a tax computation which was apparently determined from petitioners' amended 1970 return. However, based on Findings of Fact "1", "2" "4" supra and petitioners' letter of January 14, 1974, the correct tax should be:

Partnership Income		\$174,502.00
Less expenses:	$\frac{\$174,502.00}{\$363,227.00} \times \$14,803.00 =$	<u>7,112.00</u>
Total New York Income		\$167,390.00
Itemized deductions:	$\frac{\$167,390.00}{\$336,468.00} \times \$10,073.00 =$	<u>5,011.00</u>
Balance		\$162,379.00
Exemptions		<u>2,500.00</u>
New York Taxable Income		\$159,879.00
New York Tax		\$ 20,943.06
Statutory Credit		<u>25.00</u>
Balance		\$ 20,918.06
New York Tax Per Original Return	\$1,748.50	
New York Tax Paid with Amended Return	<u>\$8,429.00</u>	\$ 10,177.50
Tax Due		<u>\$ 10,740.56</u>

8. Petitioners did not sign the withdrawal claiming that the "Commission" waived the carryback to 1969. In a letter dated September 8, 1982 petitioners alleged that the Tax Department told them to forget 1969, since the Tax Department had inadvertantly destroyed their 1969 tax return. Therefore, they argued that the Commission should be estopped from claiming that the 1972 net operating

loss should be carried to 1969. They also stated that a 50 percent settlement would be a fair offer. On September 11, 1982, petitioners mailed a check in the amount of \$2,100.00 in settlement of the tax due for 1970.

9. Petitioners' representative, in his memorandum dated July 8, 1983, asserts that in 1969 petitioners were residents of New York State and filed New York State resident returns for said year. Petitioners therefore argue that their 1972 net operating loss should be carried back to 1970, not 1969, in accordance with Manuel S. Martinez, Advisory Opinion (TSB-A-82-(6)-I). Although petitioners' 1969 New York income tax return is not a part of the file herein, said file indicates that the petitioners did in fact file a nonresident return for 1969. Petitioners have not introduced any evidence to support their assertion that they filed a New York State resident return for 1969.

10. As a ground for redetermination of the 1970 deficiency, petitioners claimed that allocation of the entire income to New York State is contrary to the law. In a letter dated August 26, 1975 to the Chief of Review Unit, Income Tax Bureau referencing the petition, petitioners' representative stated that he had discussed with an auditor two facets of the case:

"(1) I asked that I be permitted to carryback subsequent New York NOL's of this taxpayer, to the year 1970; and
(2) I asked permission to file revised estimates and returns to apply the \$5,000 1969 overpayment to 1970. This would save six years interest on \$5,000."

The letter further stated that the auditor advised that Regulation 131.6(c) did not permit the carryback and that the representative should take the other request up with higher authority. However, it was stated in the letter that Regulation 131.6(c) was ruled invalid on June 26, 1975 by Graham v. State Tax Commission, 48 A.D.2d 444.

The letter concluded:

"In any event I wish the taxpayer to be protected in his right to carryback, until the law is settled. Please advise me what to do to give taxpayer this protection. Also advise me if we can take steps to apply the \$5,000. to the 1970 return."

While the letter did not mention the year in which petitioners sustained a net operating loss or how the \$5,000.00 overpayment for 1969 was determined, the Chief of the Review Unit Income Tax Bureau replied to the letter on September 10, 1975. The letter stated in pertinent part:

"The issues raised in your letter of August 26, 1975 concerning the net operating loss to be carried back is a different issue from the Notice of Deficiency. If you wish to file a claim for refund and submit figures and details showing how the loss was computed as well as how the tax would be affected, you may do so. If the claim for refund is denied, you will then have the opportunity to file a petition on the claim which will entitle Mr. Shapiro to a formal hearing under the Statute.

I am unable to answer the second portion of your inquiry since I cannot determine wherein the 1969 return enters the picture nor can I reconcile any 1969 item with the 1970. If you are referring to a net operating loss carryback to 1969, the claim for 1969 may also be filed providing the statute has not expired. Therefore, unless further information in more detail is submitted covering 1969, I am unable to give you any information regarding the application of a \$5,000.00 payment to 1970.

In order to facilitate matching any reply and claim with the file, please use the enclosed envelope."

On November 7, 1975, the Review Unit notified petitioners that since no reply was received to their letter of September 10, 1975, the file was being referred to the Hearing Unit.

In April, 1976 petitioners filed an amended 1970 income tax return (see Finding of Fact "4" supra). Petitioners have never filed a claim for refund for 1969 based on a net operating loss carryback from 1972.

11. Petitioners submitted Internal Revenue Service form 4952, Investment Interest Expense Deduction - 1977, as substantiation for the \$13,691.00 loss claimed on petitioners 1977 New York State income tax return. It was stated that the figure on the form was incorrect because \$14,000.00 was omitted and that this was adjusted by the Internal Revenue Service at an audit performed in 1980. The interest deduction claimed on the form was a purported carryover deduction from prior years. However, no prior year forms were submitted to show how the carryover deduction was computed. The form was not properly completed and the amount shown on the form could not be reconciled to the \$13,691.00 loss. The Internal Revenue Service audit report was not submitted to show the correction of the deduction. Petitioners claimed that they could not take all investment interest deduction in 1976 because "there were not any Schedule E items in 1976." However, petitioners 1976 New York income tax return indicated that petitioner should have reported for federal tax purposes over \$60,000.00 as partnership income, a Schedule E item of income, if their federal tax return was properly completed.

12. Petitioners did not submit any evidence to show that they were not subject to the penalty imposed for 1976 and 1977.

CONCLUSIONS OF LAW

A. That pursuant to section 172(b)(1)(A)(i) of the Internal Revenue Code a net operating loss shall be carried back to each of the three taxable years preceding the taxable year of such loss.

B. That pursuant to section 687(d) of the Tax Law a claim for credit or refund attributable to a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss.

C. That pursuant to section 687(e) of the Tax Law no credit or refund shall be allowed or made after the expiration of the applicable period of limitation specified in this Article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any refund erroneous.

D. That petitioners' arguments as stated in Findings of Fact "8" and "9", supra, are without merit. There is no evidence in the file other than petitioners' allegation that they were informed that they could not carryback the 1972 net operating loss to 1969 because the Tax Department destroyed petitioners' 1969 tax return. While petitioners are correct in reference to the advisory opinion, petitioners have not established that they were residents of New York in 1969. On the contrary, the file indicates that petitioners filed a nonresident return for 1969. Petitioners' last argument is also without merit. Petitioners were informed to file a claim for refund for 1969 (see Finding of Fact "10"). However, they chose to carryback the net operating loss to 1970 and they never filed a claim for refund for 1969 which would have been timely at the time they filed their amended 1970 return.

E. That since petitioners were nonresidents of New York during the period 1969 through 1972 and thereafter, they were required to first carryback their 1972 net operating loss to 1969. Inasmuch as said loss was fully absorbed by their 1969 New York income, petitioners cannot properly carryback their 1972 net operating loss to 1970. They had until April 15, 1976 to file a claim for refund for 1969. Since the time for filing a claim for refund for 1969 has expired, no refund can be authorized in accordance with section 687(e) of the Tax Law.

F. That the burden of proof is upon petitioners to substantiate the \$13,691.00 loss (section 689(e) of the Tax Law and section U46-39.0.(e) of Chapter 46, Title U of the Administrative Code of the City of New York). The submission of an incomplete form (Internal Revenue Service form 4952) is insufficient evidence to sustain their burden of proof to substantiate the loss.


G. That the Audit Division is directed to apply the \$2,100.00 payment (see Finding of Fact "8", supra) against the 1970 tax deficiency as computed in Finding of Fact "7", supra.

H. That the petition for the 1970 tax year is granted to the extent indicated in Conclusion of Law "G", supra, and is in all other respects denied. The Notice of Deficiency dated February 25, 1974 is sustained as indicated in Conclusion of Law "G", supra. The petition for the 1976 and 1977 tax years is denied and the Notice of Deficiency dated May 14, 1980 is sustained.

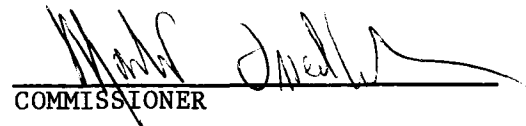
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

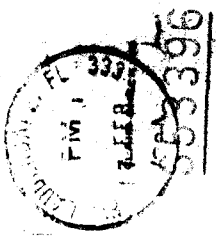
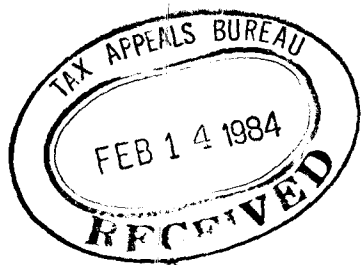

PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



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Feb. 1979

Norman & Nita Shapiro
Tower #1, Apt. 2705
2201 S. Ocean Dr.
Hollywood, FL 33020

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

January 18, 1984

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Tower #1, Apt. 2705
2201 S. Ocean Dr.
Hollywood, FL 33020

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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

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Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Eugene L. Boyars
P.O. Box 1146
Selden, NY 117840946
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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NORMAN SHAPIRO and NITA SHAPIRO	:	DECISION
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Refunds of Personal Income Tax under Article 22	:	
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and New York City Nonresident Earnings Tax under	:	
Chapter 46, Title U of the Administrative Code	:	
of the City of New York for the Years 1976 and	:	
1977.	:	

Petitioners, Norman Shapiro and Nita Shapiro, Tower 1, 2201 South Ocean Drive, Apartment 2705, Hollywood, Florida 33020, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1970, 1976 and 1977 and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1976 and 1977 (File Nos. 13407 and 31464).

A formal hearing for tax year 1970 was commenced before Harvey Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 16, 1978 at 1:30 P.M. and continued sine die. Petitioners appeared by Eugene L. Boyars, C.P.A. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

On July 3, 1983, petitioners advised the State Tax Commission, in writing, that they desired to waive further formal hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUES

I. Whether petitioners can properly carryback their 1972 net operating loss to 1970.

II. Whether petitioners substantiated a \$13,691.00 loss claimed on their 1977 New York nonresident income tax return.

FINDINGS OF FACT

1. Petitioners, Norman Shapiro and Nita Shapiro, timely filed a joint New York State Income Tax Nonresident Return for 1970. On said return petitioners reported \$26,450.00 in partnership income and computed a tax of \$1,748.50. Said return resulted in an overpayment of \$5,751.50 which they requested to be credited to their 1971 estimated tax account. They timely filed joint New York State income tax nonresident returns for 1976 and 1977. On the 1976 income tax return petitioners reported business income of \$57,281.00 and partnership income of \$3,039.00. They also claimed a net operating loss carryover from 1975 of \$71,982.00. On the 1977 income tax return they reported business income of \$177,777.00 and a partnership loss of \$13,691.00. They also claimed the balance of the net operating loss carryover from 1975 of \$11,662.00. Petitioners did not file New York City nonresident earnings tax returns for 1976 and 1977.

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Petitioners' New York income was determined to be \$174,502.00. In computing the deficiency the Audit Division allowed, prior to allocation, expenses of \$14,803.00 and a standard deduction of \$1,000.00. According to petitioners' letter of January 14, 1974, petitioners reported total federal partnership income of \$363,227.00 less expenses of \$14,803.00.

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loss to be first applied to 1969. Petitioners' 1969 New York income was sufficient to absorb all of the 1972 net operating loss. Hence, none of said loss was applied to their 1970 tax year.

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8. Petitioners did not sign the withdrawal claiming that the "Commission" waived the carryback to 1969. In a letter dated September 8, 1982 petitioners alleged that the Tax Department told them to forget 1969, since the Tax Department had inadvertantly destroyed their 1969 tax return. Therefore, they argued that the Commission should be estopped from claiming that the 1972 net operating

loss should be carried to 1969. They also stated that a 50 percent settlement would be a fair offer. On September 11, 1982, petitioners mailed a check in the amount of \$2,100.00 in settlement of the tax due for 1970.

9. Petitioners' representative, in his memorandum dated July 8, 1983, asserts that in 1969 petitioners were residents of New York State and filed New York State resident returns for said year. Petitioners therefore argue that their 1972 net operating loss should be carried back to 1970, not 1969, in accordance with Manuel S. Martinez, Advisory Opinion (TSB-A-82-(6)-I). Although petitioners' 1969 New York income tax return is not a part of the file herein, said file indicates that the petitioners did in fact file a nonresident return for 1969. Petitioners have not introduced any evidence to support their assertion that they filed a New York State resident return for 1969.

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In order to facilitate matching any reply and claim with the file, please use the enclosed envelope."

On November 7, 1975, the Review Unit notified petitioners that since no reply was received to their letter of September 10, 1975, the file was being referred to the Hearing Unit.

In April, 1976 petitioners filed an amended 1970 income tax return (see Finding of Fact "4" supra). Petitioners have never filed a claim for refund for 1969 based on a net operating loss carryback from 1972.

11. Petitioners submitted Internal Revenue Service form 4952, Investment Interest Expense Deduction - 1977, as substantiation for the \$13,691.00 loss claimed on petitioners 1977 New York State income tax return. It was stated that the figure on the form was incorrect because \$14,000.00 was omitted and that this was adjusted by the Internal Revenue Service at an audit performed in 1980. The interest deduction claimed on the form was a purported carryover deduction from prior years. However, no prior year forms were submitted to show how the carryover deduction was computed. The form was not properly completed and the amount shown on the form could not be reconciled to the \$13,691.00 loss. The Internal Revenue Service audit report was not submitted to show the correction of the deduction. Petitioners claimed that they could not take all investment interest deduction in 1976 because "there were not any Schedule E items in 1976." However, petitioners 1976 New York income tax return indicated that petitioner should have reported for federal tax purposes over \$60,000.00 as partnership income, a Schedule E item of income, if their federal tax return was properly completed.

12. Petitioners did not submit any evidence to show that they were not subject to the penalty imposed for 1976 and 1977.

CONCLUSIONS OF LAW

A. That pursuant to section 172(b)(1)(A)(i) of the Internal Revenue Code a net operating loss shall be carried back to each of the three taxable years preceding the taxable year of such loss.

B. That pursuant to section 687(d) of the Tax Law a claim for credit or refund attributable to a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss.

C. That pursuant to section 687(e) of the Tax Law no credit or refund shall be allowed or made after the expiration of the applicable period of limitation specified in this Article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any refund erroneous.

D. That petitioners' arguments as stated in Findings of Fact "8" and "9", supra, are without merit. There is no evidence in the file other than petitioners' allegation that they were informed that they could not carryback the 1972 net operating loss to 1969 because the Tax Department destroyed petitioners' 1969 tax return. While petitioners are correct in reference to the advisory opinion, petitioners have not established that they were residents of New York in 1969. On the contrary, the file indicates that petitioners filed a nonresident return for 1969. Petitioners' last argument is also without merit. Petitioners were informed to file a claim for refund for 1969 (see Finding of Fact "10"). However, they chose to carryback the net operating loss to 1970 and they never filed a claim for refund for 1969 which would have been timely at the time they filed their amended 1970 return.

E. That since petitioners were nonresidents of New York during the period 1969 through 1972 and thereafter, they were required to first carryback their 1972 net operating loss to 1969. Inasmuch as said loss was fully absorbed by their 1969 New York income, petitioners cannot properly carryback their 1972 net operating loss to 1970. They had until April 15, 1976 to file a claim for refund for 1969. Since the time for filing a claim for refund for 1969 has expired, no refund can be authorized in accordance with section 687(e) of the Tax Law.

H. That the petition for the 1970 tax year is granted to the extent indicated in Conclusion of Law "G", supra, and is in all other respects denied. The Notice of Deficiency dated February 25, 1974 is sustained as indicated in Conclusion of Law "G", supra. The petition for the 1976 and 1977 tax years is denied and the Notice of Deficiency dated May 14, 1980 is sustained.

JAN 18 1984

Roderick A. Allen
PRESIDENT

Francis R Koenig
COMMISSIONER

Mark J. Anderson
COMMISSIONER