

BUREAU OF LAW

MEMORANDUM

*U. B. T. Determinations**A-Z**Receivend, Dominick and Edmund*

TO: **The State Tax Commission**

FROM: **Solomon Sies, Hearing Officer**

SUBJECT: **DOMINICK HOCKERINO and EDMUND HOCKERINO,
individually and as co-partners d/b/a
the firm name and style of:
KNOTTY PINE LANES**

**1957 Assessment No. B-772077
1958 Assessment No. AB-000833**

Article 16-A

*U. B. T. Determinations**A-Z**Knotty Pine Lanes*

The issue herein involves the method of computing the allowance for depreciation on furniture, fixtures and equipment on the partnership tax returns filed by the taxpayers for the years 1957 and 1958.

The partnership operates a bowling alley in Staten Island, City and State of New York consisting of a one-story structure with automatic pin setting machines for sixteen (16) lanes. The premises are entirely air-conditioned. The taxpayers on their partnership returns for the years in question claimed accelerated depreciation on the sum-of-the-digits method on furniture, fixtures and equipment in the sum of \$10,232.95 for the year 1957 and in the sum of \$40,401.37 for the year 1958. They indicated on the 1958 return that said furniture, fixtures and equipment were acquired in 1957 at a cost of \$225,245.19 and were being depreciated over a ten year period. The Income Tax Bureau issued assessments disallowing the depreciation claimed by the taxpayers and only allowed depreciation on a straight-line basis at the rate of 10% per annum.

Under the sum-of-the-years-digits method annual allowances for depreciation are computed by applying changing fractions to the cost or other basis of the property reduced by estimated salvage. The numerator of the fraction changes each year to a number which corresponds to the remaining useful life of the asset (including the year for which the allowance is being computed), and the denominator which remains constant is the sum of all the years digits corresponding to the estimated useful life of the asset. This method provides larger deductions in the early years and smaller ones in the later years.

Section 360(B) of the Tax Law, permitting a reasonable allowance for the exhaustion, wear and tear and obsolescence of property used in a trade or business is based upon the provisions

of the early Internal Revenue Act which were carried over into Section 23(1) Internal Revenue Code of 1939. At first Federal practice only permitted the declining balance method in isolated instances (see I.T. 2369, C.B. VI-2 p. 63, for example). The Board of Tax Appeals extended the types of business and assets to which the declining balance method could be applied. (See Lady Manufacturing Company, 2 B.T.A. 230; Matter of Eaton, 2 B.T.A. 463 and Simmons Brick Company, 14 B.T.A. 878) In fact the Commissioner of Internal Revenue had, where the initial cost was unknown, used the depreciated cost as a basis for further depreciation. In 1946 the Bureau of Internal Revenue held that the use of the declining balance method of computing depreciation would be approved, for Federal income tax purposes, provided it accords with the method of accounting regularly employed in keeping the books of the taxpayer and results in reasonable depreciation allowances and proper reflection of net income for the taxable year or years involved. It held further that the declining balance method and other methods of computing depreciation are methods of accounting for a change in the use of which, for Federal income tax purposes, the Commissioner's consent must first be obtained as prescribed in Section 29.41-2 of Regulations 111. (I.T. 3813, C.B. 1946-2 p. 42.) In any event, the methods of declining balance and the sum of the year's digits were incorporated in Section 167 (b)(2)(3) of the 1954 Internal Revenue Code.

Article 175 of the Income Tax Regulations under Article 16 of the Tax Law provides for depreciation in equal annual installments (straight line method) or in accordance with any other recognized trade practice. In Income Tax Bureau Manual of Policy, Article 175 (8/25/58), pertaining to the method of computing depreciation allowance, it is stated as follows:

"Double Declining Balance and Sum-of-the-digits Methods. These accelerated depreciation methods are allowable for Federal tax purposes under the Internal Revenue Code of 1954, but neither method is allowable under the New York State Income Tax Law. Neither method is in accordance with 'recognized trade practice.'"

The instructions for preparing income tax returns under Article 16 of the Tax Law state that accelerated depreciation, regardless of the basis used is not permitted. The instruction sheet accompanying 1958 partnership returns stated, in part, that depreciation must be computed on the straight-line method. Article 531 of the Income Tax Regulations, then in effect, provided, in part, that "the forms and instructions contained therein have the force and effect of regulations."

The assessment for 1957 included a disallowance of write-off of good will in the amount of \$3,000, which was subsequently allowed and a portion of said assessment was cancelled on May 4, 1960 in the amount of \$96.

I am of the opinion that the assessments should be sustained and that the taxpayer's applications for revisions or refund be denied.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

SOLOMON SIES
Hearing Officer

SS:GE

September 17, 1969

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATIONS

OF

**DOMINICK NOGERINO & EDMOND
NOGERINO, individually and
as co-partners d/b/a the
firm name and style of:
KNOTTY PINE LANES**

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1957 AND 1958.**

The taxpayers herein having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1957 and 1958 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on the 17th day of January, 1964 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance and the taxpayers having been represented by Patrick J. Martinetti, C.P.A. and Joseph Branan, Tax Consultant, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the years 1957 and 1958 the taxpayers, Dominick Nocerino and Edmond Nocerino, were doing business under the firm name and style of Knotty Pine Lanes, operating a bowling alley in Staten Island, City and State of New York, where they maintained sixteen (16) lanes with automatic pin setting machines; that the premises were entirely air-conditioned; that the taxpayers on their partnership returns for the years 1957 and 1958 claimed accelerated depreciation on the sum-of-the-digits method on furniture, fixtures and equipment in the sum of \$10,282.95 for the year 1957 and in the sum of \$40,461.37 for the year 1958; that

they indicated on the 1958 return that the furniture, fixtures and equipment were acquired in 1957 at a cost of \$226,243.19 and were being depreciated over a ten year period; that on the 1957 partnership return, the taxpayers claimed a write-off of good will in the amount of \$3,000.

(2) That on April 12, 1960, the Department of Taxation and Finance made an additional assessment of unincorporated business tax against the taxpayers for the year 1957 (Assessment No. 2-778077) disallowing the depreciation claimed by them on the sum-of-the-digits method on furniture, fixtures and equipment for New York State tax purposes but only allowed depreciation (3 months) on a straight-line basis at 10% per annum in the amount of \$5,626.13; that the write-off of good will was disallowed; that additional unincorporated business tax was imposed in the amount of \$244.06; that on May 4, 1960, a portion of the assessment was cancelled in the amount of \$96.00 based upon an allowance of write-off of good will.

(3) That on March 7, 1962, the Department of Taxation and Finance made an additional assessment of unincorporated business tax for the year 1958 (Assessment No. AB-000533) disallowing depreciation claimed on the sum-of-the-digits method on furniture, fixtures and equipment for New York State tax purposes but only allowed depreciation on a straight-line basis at 10% per annum in the amount of \$22,789.28; that additional unincorporated business tax was imposed in the amount of \$690.70.

(4) That the instruction sheet accompanying 1958 partnership returns stated, in part, that "depreciation must be computed on the straight-line method"; that Article 531 of the Income Tax Regulations, then in effect, provided, in part, that "the forms and instructions contained therein have the force and effect of regulations."

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(5) That the taxpayers have failed to establish that the sum-of-the-digits method used by them in computing the allowance for depreciation represented a reasonable allowance for the exhaustion, wear and tear of property used in the business or that the method used by them was in accordance with a regular trade practice or that it resulted in the proper reflection of net income for the taxable years involved.

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

DETERMINES:

(A) That the accelerated depreciation claimed by the taxpayers on the sum-of-the-digits method on furniture, fixtures and equipment was properly disallowed for New York State tax purposes for the years in issue; that the depreciation allowed on the straight-line basis at 10% per annum was proper and in accordance with Articles 175 and 179 of the Personal Income Tax Regulations and also within the intent and meaning of Subdivision 8 of Section 360 and Section 385(c) of the Tax Law, then in effect.

(B) That, accordingly, the assessments are correct; that said assessments do not include any taxes or other charges which could not have been lawfully demanded and that the applications for revision or refund with respect to the aforementioned assessments (Assessment Nos. B-772077 and AB-000533 in the sums of \$148.06 and \$690.70, respectively) be and the same are hereby denied.

DATED: Albany, New York on the 6th day of October, 1969.

STATE TAX COMMISSION

/s/

NORMAN GALLMAN

Commissioner

/s/

A. BRUCE MANLEY

Commissioner

/s/

MILTON KOERNER

Commissioner

that the Government has failed to establish an effective

policy of control over the foreign exchange market and the

balance of payments, and that the Government has failed to

take effective measures to control the foreign exchange market

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WILLIAM C. HAW

A. BRUCE MANLEY

MILTON ROSENBERG