

STATE OF NEW YORK  
STATE TAX COMMISSION

*F. H. Hillel Company*  
*Unincorporated Business*  
*Article 23*

In the Matter of the Petition

of  
F. H. HILLEL COMPANY

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(s) 23 & 16A of the  
Tax Law for the (Year(s) ended April 30, 1959, April 30, 1960, April 30, 1961,  
April 30, 1962, April 30, 1963 and April 30, 1964

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 9th day of July , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon F. H. Hillel  
Company (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: F. H. Hillel Company  
Park Drive South  
Rye, 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

9th day of July , 1971.

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
F. H. HILLEL COMPANY : DETERMINATION  
for a Redetermination of a Deficiency :  
or for Refund of Unincorporated Business :  
Taxes under Articles 23 and 16A of the :  
Tax Law for the Years ended April 30, 1959, :  
April 30, 1960, April 30, 1961, April 30, :  
1962, April 30, 1963, and April 30, 1964. :

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The taxpayer filed a petition for a refund of unincorporated business taxes under Article 23 and 16A of the Tax Law for the fiscal years ended April 30, 1959, April 30, 1960, April 30, 1961, April 30, 1962, April 30, 1963, and April 30, 1964.

A formal hearing was held in the offices of the State Tax Commission in the City of New York on October 15, 1970, before L. Robert Leisner, Hearing Officer. The taxpayer appeared through Frank H. Hillel, and the Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

This determination supersedes the determination of December 31, 1970, which omitted some of the years in issue.

ISSUES

Where a claim for refund for the fiscal years ended April 30, 1959 and April 30, 1960, were formally disallowed on November 30, 1961, and taxpayer filed a petition for a redetermination on June 28, 1968, was the taxpayer's petition for redetermination timely filed?

Where a claim for refund for the fiscal years ended April 30, 1961, April 30, 1962, April 30, 1963, and April 30, 1964, were filed on December 12, 1967, was the claim for refund timely filed?

FINDINGS OF FACT

1. On August 30, 1961, the taxpayer made a claim for refund of unincorporated business taxes dated July 25, 1961, for the fiscal

years ended April 30, 1959 and April 30, 1960. The claim was denied on November 30, 1961, and the letter of denial advised the taxpayer that a demand for a hearing must be filed within 90 days. From the denial of November 30, 1961, the taxpayer requested a hearing on October 16, 1968.

2. On December 12, 1967, the taxpayer made a claim for refund for the fiscal years ended April 30, 1961, April 30, 1962, April 30, 1963, April 30, 1964, and also again made a claim for refund of the fiscal years ended April 30, 1959 and April 30, 1960.

3. On June 28, 1968, the Income Tax Bureau denied the refund claim for the years ended April 30, 1959, and April 30, 1960, because an earlier denial, issued on November 30, 1961, was final.

4. On June 28, 1968, the Income Tax Bureau also denied the refund claim for the years ended April 30, 1961, April 30, 1962, April 30, 1963, and April 30, 1964, because the refund claims were not filed, within three years from the time the return was filed, or two years from the time the tax paid.

#### DETERMINATION

A. This determination supersedes the determination of December 31, 1970. This determination is effective on the date noted below.

B. The refund claims for the fiscal years ended April 30, 1959, and April 30, 1960, were formally denied on November 30, 1961. No demand for a hearing was made until October 16, 1968. The taxpayer did not file a timely demand for a hearing and redetermination as required by section 374 of the Tax Law.

C. The refund claim filed on December 12, 1967, for the fiscal years ended April 30, 1961, April 30, 1962, April 30, 1963, and April 30, 1964, was not filed within three years from the time the returns were filed, or two years from the time the taxes were paid as required by section 689 of the Tax Law. The refund claim is not timely filed and is barred by section 689 of the Tax Law.

D. Taxpayer's application for a refund is denied.

E. The assessments for the fiscal years ended April 30, 1959, April 30, 1960, April 30, 1961, April 30, 1962, April 30, 1963, April 30, 1964, are sustained.

DATED: Albany, New York

*July 9, 1971*

STATE TAX COMMISSION

*Vernon J. Gallivan*  
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COMMISSIONER

*Blair W. Hargis*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koerner*  
\_\_\_\_\_  
COMMISSIONER