

STATE OF NEW YORK
STATE TAX COMMISSION

L & H Company
U. B. T.
(1971)

In the Matter of the Petition

of

L & H COMPANY

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 16A of the
Tax Law for the (Year(s) 1954 :

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 8th day of July , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon L & H Company

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

wrapper addressed as follows:

L & H Company
c/o Benjamin Grund, C.P.A.
Seidman & Seidman
15 Columbus Circle
New York, N.Y. 10023

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

8th day of July , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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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 8th day of July , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Francis Neuwirth, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Francis Neuwirth, C.P.A.
c/o Pinto, Winokur & Pagano
580 Fifth Avenue
New York, N.Y. 10036
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.

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Linda Wilson

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STATE OF NEW YORK
STATE TAX COMMISSION

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of

L & H COMPANY

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Taxes under Article(s) 16A of the
Tax Law for the (Year(s) 1954

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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 8th day of July , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Benjamin Grund, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Benjamin Grund, C.P.A.
c/o Seidman & Seidman
15 Columbus Circle
New York, N.Y. 10023

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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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

8th day of July , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
L & H COMPANY	:	DETERMINATION
for Revision or Refund of Unincorporated	:	
Business Taxes under Article 16-A of the	:	
Tax Law for the year 1954.	:	
	:	

The taxpayer applied for a revision or refund of unincorporated business taxes for the fiscal year ended May 31, 1954. A formal hearing was held in the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 27, 1964. The applicant appeared by Seidman & Seidman, C.P.A. (Benjamin Grund, C.P.A.) and Pinto Winokur & Pagano, C.P.A. (Francis Neuwirth, C.P.A.)

FINDINGS OF FACT

1. On August 11, 1958, a notice of deficiency in the amount of \$29,504.95 was issued by the Income Tax Bureau under assessment number AB60311 for the year ended May 31, 1954.

2. After payment of the assessment, the petitioner timely filed an application for revision or refund dated July 22, 1959.

3. The Theatre Guild, Inc., corporation stock was owned by Lawrence Langner and Theresa Helburn from December, 1918, until May 18, 1953, when they transferred the stock of the corporation to a partnership, L & H Company. On June 8, 1953, the Theatre Guild, Inc., was liquidated with a capital distribution of \$1,003,182.64 and that amount of assets were transferred to L & H Company and were credited to the partnership capital accounts.

4. Upon recommendation of accountants, the capital stock of Theatre Guild, Inc., was transferred by Theresa Helburn and Lawrence Langner to L & H Company. Theatre Guild, Inc., terminated its activities and the Theatre Guild partnership of Theresa Helburn, Lawrence Langner and Armina Marshall was formed. There were other assets of the Theatre Guild partnership. L & H Company was formed to liquidate the assets that were no longer required for the running of any business. L & H Company did not dissolve and it maintained a bank account until October 27, 1964, the time of the hearing, and was still receiving cash in liquidation of certain of the assets of the Theatre Guild, Inc., at that time.

5. The petition claimed, 1) that this tax assessment was untimely, 2) that L & H Company was not carrying on an unincorporated business and the transaction was not subject to unincorporated business tax, and 3) that the basis of the Theatre Guild stock acquired in December, 1918, should be \$466,793.86 as of January 1, 1935, the date of the Unincorporated Business Tax Law, a proration of value to the period of December, 1918, to the date of the transfer.

6. While the unincorporated business tax schedule on said return was filled in and although the capital gain was not included on that schedule, it was included on the face of form 204 and on the capital gains schedule.

7. The assessment was made more than three years after the filing of the return.

DETERMINATION

A. Since the taxpayer fully reported the transaction in the partnership section of the return, the Income Tax Bureau is barred

from making an assessment after the statutory three year period.

B. The assessment was barred by the statute of limitations.

C. The application for a revision and refund is granted,
with statutory interest until the refund is made.

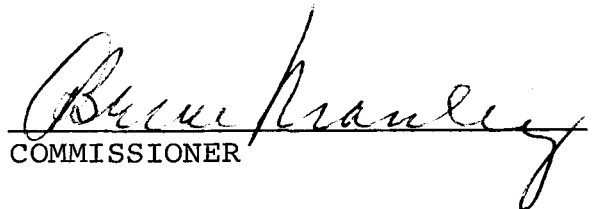
DATED: Albany, New York

July 8, 1971.


STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



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