

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MERCURY STABLES

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 of the
Tax Law for the Year(s) 1960 through :
1962.

State of New York
County of Albany

JANET MACK, 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 19th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon MERCURY STABLES

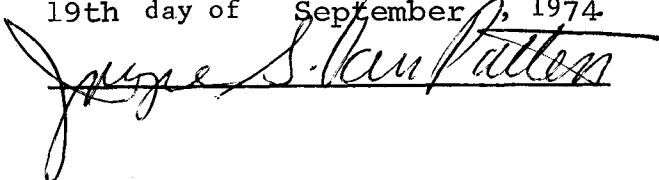

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mercury Stables
c/o Anthony Silva
641 Morris Park Avenue
New York, New York

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

19th day of September, 1974

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MERCURY STABLES

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 of the
Tax Law for the Year(s) 1960 through :
1962.

State of New York
County of Albany

JANET MACK, 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 19th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon LOUIS KONIGSBERG, 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:

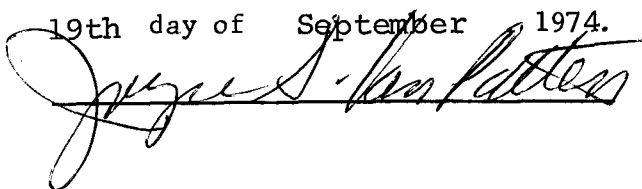
Louis Konigsberg, C.P.A.
635 Madison Avenue
New York, New York

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

19th day of September 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
September 19, 1974

Mercury Stables
c/o Anthony Silva
641 Morris Park Avenue
New York, New York

Dear Mr. Silva:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MERCURY STABLES	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1960 through 1962.	:	

Mercury Stables filed a petition for a redetermination of a deficiency or for refund of unincorporated business tax for the years 1960 through 1962. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on March 4, 1971. Petitioner appeared through Louis Konigsburg, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

1. For purposes of computation and deduction of net operating loss carryback, where a partnership had a 50% change of ownership in a year (1961) subsequent to the earliest year (1960) to which the net operating loss deduction must otherwise be carried back, did a new partnership entity come into existence, thus commencing the carryback computation with the short fiscal year of the new entity, or does the carryback computation begin with the earliest year (1960), three years from the year in which the net operating loss was sustained (1963)?

2. Should the State Tax Commission modify the 25% penalty imposed under section 685(a) of the Tax Law for the years 1961 and 1962 where a timely partnership return was filed with the unincorporated business tax return spaces blank for the year 1961 and a late return was filed for 1962, and in both instances, it is asserted that errors or delinquencies were due to neglect or confusion of the accountant?

FINDINGS OF FACT

The facts are not in dispute:

1. Partnership returns under the name of Mercury Stables were filed for the years 1960 through 1965. For the year 1960, the unincorporated business tax portion of the return was completed. In 1961, two short year returns were filed with the unincorporated business tax portion omitted. In 1962, the original return which may or may not have been filed timely, omitted that portion of the return; the amended return for 1962 completed that portion and was filed on January 3, 1964. The 1963 through 1965 returns were in all respects complete.

2. In October 1961, a partner owning a 50% interest in the partnership sold his interest to the two remaining partners. This change of ownership occasioned the filing of the two short year returns. The second return for the short taxable year October 26, 1961, through December 31, 1961, stated that no previous return had been filed for the reason that the partnership had been organized on October 26, 1961.

3. On January 18, 1965, the Income Tax Bureau issued a notice of deficiency in unincorporated business tax for the year 1960, the year ending October 20, 1961, and the year 1962. The basic tax deficiency was based upon matters of allocation and such allocation is not in dispute. The deficiency also includes a 25% negligence penalty for the years 1961 and 1962.

4. Taxpayer filed a timely petition for redetermination of deficiency for the years 1961 and 1962 and generally referred to the notice of deficiency dated January 18, 1965. Taxpayer also filed various claims for credit or refund for the years 1960, 1961 and 1962, the earliest being a claim for refund for the year 1962 filed on December 31, 1964. The claims appear to have been denied by letter

dated January 9, 1967, intended to have been dated January 9, 1968, which letter and a subsequent letter of February 14, 1968, advised that unless certain adjustments proposed were accepted by the taxpayer and the claims withdrawn, the Income Tax Bureau would refer the matter for formal hearing. The Income Tax Bureau has at no time contended that all years and issues are not properly before the State Tax Commission.

5. Taxpayer sustained substantial net operating losses during the years 1963, 1964 and 1965, which if carried back to the year 1960 and the short taxable year ending October 20, 1961, would be allowable in those years only to the extent of the proportionate interest then held by the partners remaining in the year of loss, which proportionate interest would be 50%. If the net operating loss is carried back to begin with the short taxable year ending December 31, 1961, then 100% of the loss allocable to New York would be allowed.

6. The New York allocation of the losses in the years 1963, 1964 and 1965, was proposed to be determined by the Income Tax Bureau by letter dated January 9, 1967, by dividing the New York racing purses by total purses, multiplied by racing loss.

CONCLUSIONS OF LAW

A. The proposed New York allocation of net operating losses sustained during the years 1963, 1964 and 1965 is reasonable and is to be applied for purposes of deduction.

B. Under Section 702 of the Tax Law, terms used in Article 23 of the Tax Law, have the same meaning as when used in the Internal Revenue Code, unless a different is clearly required. When applied

to partnerships, this means that the Internal Revenue Code will be applied to determine partnership income unless the application thereof for the Federal purpose of accurately reflecting the individual partners' income works a distortion or frustration of the State purpose of accurately reflecting the income of the partnership entity, or unless modification of the application is directed by the Tax Law.

C. Section 708(b)(1) of the Internal Revenue Code provides that a partnership shall be considered terminated if within a 12-month period, there is a sale or exchange of 50% more of the total interest in partnership capital and profits. The Tax Law is silent on partnership termination and application of the Federal rule as to termination does not appear to frustrate the purposes of the unincorporated business tax purpose.

D. The taxpayer known as Mercury Stables and which sustained losses during the years 1963, 1964 and 1965 began its existence on October 26, 1961, and consisted of the same two partners from that date through 1965.

E. Pursuant to provisions of section 706(2) the net operating losses sustained and as allocated to New York shall be carried back to the year commencing October 26, 1961, and the year 1962, and the amounts of the carryback are not to be computed from the year 1960.

F. The penalties imposed under section 685(a) are reduced from 25% to 5% on the ground that the major responsibility for the errors in failing to complete the unincorporated business tax portion of the return must be attributed to the accountant who prepared the return.


G. The petition is sustained to the extent that a refund or credit results from the application of Conclusion "E" above and to

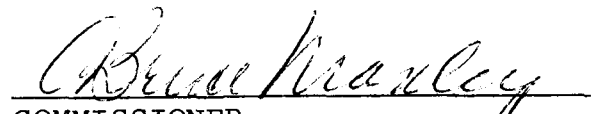
the extent that the deficiency is modified by Conclusion "D" above.


The petition is in all other respected denied.

DATED: Albany, New York
September 19, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

- ☐ Moved, left no address
☐ No such number
☐ No such person
☒ Address not forwardable
☒ Address see unknown

25M6

Mercury Stables
c/o Anthony Silva
641 Morris Park Avenue
New York, New York

No better address given - Income tax Bulletin
9/27/74





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
September 19, 1974

Mercury Stables
c/o Anthony Silva
641 Morris Park Avenue
New York, New York

Dear Mr. Silva:

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

Please take further notice that pursuant to
Section(s) 722 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 4 months
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MERCURY STABLES	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1960 through 1962.	:	

Mercury Stables filed a petition for a redetermination of a deficiency or for refund of unincorporated business tax for the years 1960 through 1962. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on March 4, 1971. Petitioner appeared through Louis Konigsburg, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

1. For purposes of computation and deduction of net operating loss carryback, where a partnership had a 50% change of ownership in a year (1961) subsequent to the earliest year (1960) to which the net operating loss deduction must otherwise be carried back, did a new partnership entity come into existence, thus commencing the carryback computation with the short fiscal year of the new entity, or does the carryback computation begin with the earliest year (1960), three years from the year in which the net operating loss was sustained (1963)?

2. Should the State Tax Commission modify the 25% penalty imposed under section 685(a) of the Tax Law for the years 1961 and 1962 where a timely partnership return was filed with the unincorporated business tax return spaces blank for the year 1961 and a late return was filed for 1962, and in both instances, it is asserted that errors or delinquencies were due to neglect or confusion of the accountant?

WITNESSED AND SIGNED

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MEASURY STAPLES

for a Reorganization of a Partnership or

for Relief of Unincorporated Partners
Under Article 23 of the Tax Law
for the Years 1960 through 1962.

MEASURY STAPLES filed a petition for a reorganization of

a partnership or for relief of unincorporated partners for the

years 1960 through 1962. A formal hearing was held before

L. Robert Johnson, Hearing Officer, at the office of the State

Tax Commission, 80 Centre Street, New York, New York on March 4,

1971. Petitioner appeared through Louis J. Winkler, C.P.A., and

the income tax return was recommended by Edward H. Davis, Esq.,

(Alexander Weiss, Esq., of counsel).

ISSUES

1. For purposes of computation and deduction of net operating

loss carryback, where a partnership had a 50% change of ownership

in a year (1961) subsequent to the calendar year (1960) to which

the net operating loss deduction was otherwise be carried back,

did a new partnership entity come into existence, thus commencing

the carryback computation with the short fiscal year of the new

entity, or does the carryback computation begin with the earliest

year (1960), three years from the year in which the net operating

loss was sustained (1963)?

2. Should the State Tax Commission modify the 30% entity disposed

under section 637(a) of the Tax Law for the years 1960 and 1962

where a partnership was formed with the unincorporated

business tax return was filed for the year 1961 and a later return

was filed for 1962, and in both instances, it is requested that the

or delinquent status be removed from the partnership?

FINDINGS OF FACT

The facts are not in dispute:

1. Partnership returns under the name of Mercury Stables were filed for the years 1960 through 1965. For the year 1960, the unincorporated business tax portion of the return was completed. In 1961, two short year returns were filed with the unincorporated business tax portion omitted. In 1962, the original return which may or may not have been filed timely, omitted that portion of the return; the amended return for 1962 completed that portion and was filed on January 3, 1964. The 1963 through 1965 returns were in all respects complete.

2. In October 1961, a partner owning a 50% interest in the partnership sold his interest to the two remaining partners. This change of ownership occasioned the filing of the two short year returns. The second return for the short taxable year October 26, 1961, through December 31, 1961, stated that no previous return had been filed for the reason that the partnership had been organized on October 26, 1961.

3. On January 18, 1965, the Income Tax Bureau issued a notice of deficiency in unincorporated business tax for the year 1960, the year ending October 20, 1961, and the year 1962. The basic tax deficiency was based upon matters of allocation and such allocation is not in dispute. The deficiency also includes a 25% negligence penalty for the years 1961 and 1962.

4. Taxpayer filed a timely petition for redetermination of deficiency for the years 1961 and 1962 and generally referred to the notice of deficiency dated January 18, 1965. Taxpayer also filed various claims for credit or refund for the years 1960, 1961 and 1962, the earliest being a claim for refund for the year 1962 filed on December 31, 1964. The claims appear to have been denied by letter

- 2 -
FINDINGS OF FACT

The facts are not in dispute:

1. Partnership returns under the name of Mercury Resins were filed for the years 1950 through 1953, for the year 1950, the unincorporated business for which the return was completed. In 1951, two short year returns were filed with the unincorporated business tax authority. In 1952, the business return which may not have been filed timely, omitted that portion of the return; the amended return for 1951 completed that portion and was filed on January 3, 1954. The 1953 through 1955 returns were in all respects complete.
2. In October 1951, a partner owning a 50% interest in the partnership sold his interest to the two remaining partners. This change of ownership necessitated the filing of the two short year returns. The second return for the short taxable year October 26, 1951, through December 31, 1951, stated that no previous return had been filed for the reason that the partnership had been organized on October 26, 1951.
3. On January 18, 1952, the Income Tax Bureau issued a notice of deficiency in unincorporated business tax for the year 1950, the year ending October 26, 1951, and the year 1952. The basic tax deficiency was based upon matters of allocation and such allocation is not in dispute. The deficiency also includes a 25% negligence penalty for the years 1951 and 1952.
4. Taxpayer filed a timely petition for reconsideration of deficiency for the years 1951 and 1952 and generally referred to the notice of deficiency dated January 18, 1952. Taxpayer also filed various claims for credit or refund for the years 1950, 1951 and 1952, the earliest being a claim for refund for the year 1952 filed on December 31, 1954. The claims appear to have been denied by letter.

dated January 9, 1967, intended to have been dated January 9, 1968, which letter and a subsequent letter of February 14, 1968, advised that unless certain adjustments proposed were accepted by the taxpayer and the claims withdrawn, the Income Tax Bureau would refer the matter for formal hearing. The Income Tax Bureau has at no time contended that all years and issues are not properly before the State Tax Commission.

5. Taxpayer sustained substantial net operating losses during the years 1963, 1964 and 1965, which if carried back to the year 1960 and the short taxable year ending October 20, 1961, would be allowable in those years only to the extent of the proportionate interest then held by the partners remaining in the year of loss, which proportionate interest would be 50%. If the net operating loss is carried back to begin with the short taxable year ending December 31, 1961, then 100% of the loss allocable to New York would be allowed.

6. The New York allocation of the losses in the years 1963, 1964 and 1965, was proposed to be determined by the Income Tax Bureau by letter dated January 9, 1967, by dividing the New York racing purses by total purses, multiplied by racing loss.

CONCLUSIONS OF LAW

A. The proposed New York allocation of net operating losses sustained during the years 1963, 1964 and 1965 is reasonable and is to be applied for purposes of deduction.

B. Under Section 702 of the Tax Law, terms used in Article 23 of the Tax Law, have the same meaning as when used in the Internal Revenue Code, unless a different is clearly required. When applied

dated January 9, 1967, intended to have been dated January 9, 1968, which letter and a subsequent letter of February 14, 1968, advised that unless certain adjustments proposed were accepted by the taxpayer and the claims withdrawn, the Income Tax Bureau would refer the matter for formal hearing. The Income Tax Bureau has at no time contended that all years and issues are not properly before the State Tax Commission.

5. Taxpayer sustained substantial net operating losses during the years 1963, 1964 and 1965, which it carried back to the year 1960 and the short taxable year ending October 30, 1961, would be allowable in those years only to the extent of the proportionate interest then held by the partners remaining in the year of loss, which proportionate interest would be 50%. If the net operating loss is carried back to begin with the short taxable year ending December 31, 1961, then 100% of the loss allocable to New York would be allowed.

6. The New York allocation of the losses in the years 1963, 1964 and 1965, was proposed to be determined by the Income Tax Bureau by letter dated January 9, 1967, by dividing the New York racing purses by total purses, multiplied by racing loss.

CONCLUSIONS OF LAW

A. The proposed New York allocation of net operating losses sustained during the years 1963, 1964 and 1965 is reasonable and is to be applied for purposes of taxation.

B. Under Section 701 of the Tax Law, terms used in Article 13 of the Tax Law, have the same meaning as when used in the Internal Revenue Code, unless a different is clearly required. When applied

to partnerships, this means that the Internal Revenue Code will be applied to determine partnership income unless the application thereof for the Federal purpose of accurately reflecting the individual partners' income works a distortion or frustration of the State purpose of accurately reflecting the income of the partnership entity, or unless modification of the application is directed by the Tax Law.

C. Section 708(b)(1) of the Internal Revenue Code provides that a partnership shall be considered terminated if within a 12-month period, there is a sale or exchange of 50% more of the total interest in partnership capital and profits. The Tax Law is silent on partnership termination and application of the Federal rule as to termination does not appear to frustrate the purposes of the unincorporated business tax purpose.

D. The taxpayer known as Mercury Stables and which sustained losses during the years 1963, 1964 and 1965 began its existence on October 26, 1961, and consisted of the same two partners from that date through 1965.

E. Pursuant to provisions of section 706(2) the net operating losses sustained and as allocated to New York shall be carried back to the year commencing October 26, 1961, and the year 1962, and the amounts of the carryback are not to be computed from the year 1960.

F. The penalties imposed under section 685(a) are reduced from 25% to 5% on the ground that the major responsibility for the errors in failing to complete the unincorporated business tax portion of the return must be attributed to the accountant who prepared the return.

G. The petition is sustained to the extent that a refund or credit results from the application of Conclusion "E" above and to

to partnerships, it means that the Internal Revenue Code will be applied to determine partnership income unless the application thereof for the Federal purpose of accurately reflecting the individual partners' income works a distortion or frustration of the State purpose of accurately reflecting the income of the partnership entity, or unless modification of the application is directed by the Tax Law.

D. Section 703(b)(1) of the Internal Revenue Code provides that a partnership shall be considered terminated if within a 12-month period there is a sale or exchange of 50% more of the total interest in partnership capital and profits. The Tax Law is silent on partnership termination and application of the Federal rule as to termination does not appear to require the purpose of the unincorporated business.

Tax purposes.

1. The taxpayer known as "X" and "Y" and their estate on losses during the years 1962, 1963 and 1964 began the existence on October 25, 1961, and consisted of the same two partners from that date through 1962.

2. Pursuant to provisions of section 703(2) the net operating losses sustained and allocated to New York shall be carried back to the year commencing October 25, 1961, and the year 1962, and the amounts of the carryback are not to be computed from the year 1960.

3. The penalties imposed under section 6651(a) are reduced from 5% to 2% on the ground that the taxpayer responsibility for the error in failing to compute the unincorporated business tax portion of the return was attributed to the accountant who prepared the return.

4. The section is amended to the extent that a refund or credit results from the application of conclusion "3" above and to

the extent that the deficiency is modified by Conclusion "D" above.
The petition is in all other respects denied.

DATED: Albany, New York
September 19, 1974

STATE TAX COMMISSION

Maurice P. Prosser
COMMISSIONER

Bruce M. Mealey
COMMISSIONER

Milton Krenn
COMMISSIONER

RECEIVED
SEP 20 1974
STATE TAX COMMISSION
ALBANY, NEW YORK

the extent that the testimony is material to the Commission "B" above.

The petition is in all other respects dated.

STATE TAX COMMISSION

ALBANY, NEW YORK
September 19, 1937

COMMISSIONER

COMMISSIONER

COMMISSIONER

RECEIVED

OFFICE OF THE COMMISSIONER

ALBANY, N. Y.