

STATE OF NEW YORK
STATE TAX COMMISSION

TAX *Personal Income* 360.75
ART. 16 SECS. 360.5; 350.12
KEY WORDS *Loss - other than (a)*
reported loss - Transmittal
for profit
CROSS REFERENCES.

IN THE MATTER OF THE APPLICATION
OF

JENNIE R. WAXMAN

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEARS 1952 AND 1957

CITE LAW CITATIONS *Allyd Smith*
Comm. 116 F. 2d 642
Comm. v D & C (1964)
REMARKS *333 F 2d 585*
30 Am Jur 56, 9

Jennie R. Waxman having filed applications for revision or refund of personal income taxes assessed for the years 1952 and 1957, and such applications having been denied, and a hearing having been held on the matter at the offices of the State Tax Commission at 80 Centre Street, New York, New York, on May 27, 1965 before Francis X. Boylan, Hearing Officer, and the taxpayer having been represented by Harry Cohen, C.P.A., of New York, New York, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By Notice of Additional Assessment AA-884113 dated August 9, 1955, the State Tax Commission made an additional assessment of normal personal income tax in the amount of \$137.51 on the taxpayer's return for the year 1952. After a warrant was issued this amount was paid in full on February 1, 1965.

This additional assessment resulted from a disallowance of a deduction in the amount of \$1,500 claimed by the taxpayer as the head of a family, from the further disallowance as unsubstantiated of \$2,500 of a loss claimed in the total amount of \$4,000, on a business venture in a motion picture, and by the disallowance, as unsubstantiated, of the amount of \$200 out of the total amount that was claimed as a deduction for medical expenses.

(2) By Notice of Additional Assessment, No. B-788692, dated June 6, 1960 an assessment was made on the taxpayer's return for the year 1957, of additional normal income tax in the amount of \$119.99. This additional assessment resulted from a recomputation of the taxpayer's taxes for the said year, consequent upon a disallowance of a deduction of \$2,500 claimed as a loss on an investment in Waxman's Productions, Incorporated. The said amount, of \$2,500 was allowed only as a capital loss. This resulted in a capital loss carryover of \$1,698.56. The taxpayer did not avail herself of this carryover loss in her returns for the succeeding years.

(3) The taxpayer filed an application for revision or refund, unsworn to but received March 15, 1966, as to the assessment for 1952, in effect appealing therefrom and stating that new evidence would be submitted to support the deductions disallowed.

The taxpayer further claimed that the additional assessment for 1957 was not timely made.

By an application for a revision or refund sworn to July 19, 1960, the taxpayer appealed also from the additional assessment for the year 1957 claiming that the assessment was made in error and that the loss taken was an ordinary deductible loss as claimed and not a capital loss.

Both such applications for revision or refund were thereafter denied.

(4) As to the additional assessments for 1952, the taxpayer's claim to the status as the head of a household was a subject of determination, dated May 6, 1959, after a hearing, wherein it was determined that she was not the head of a household. No evidence indicating any change in the household situation or

any new evidence on the question was presented in behalf of the taxpayer in the instant hearing. No evidence was adduced either to support the claimed loss on a motion picture venture in 1952 in excess of the amount of \$1,500 which was allowed as a deductible loss; neither was there any evidence to support the medical deductions claimed in excess of the amount allowed.

(6) In both years under consideration, 1952 and 1957, the taxpayer on her returns reported her occupation as that of an executive employed by Bertonne Shops, Inc., at Middletown, New York.

The character of the taxpayer's 1957 investment in Waxman's Productions, Inc., for the production of an unnamed motion picture was, it is found, the same as her earlier investment with that corporation in 1952 in another motion picture, which was entitled "The Big Night". She was an investor in Waxman's Productions, Inc., in a class of investors whose rights to recover were subordinated by agreement to the claims of creditors for services or goods used in the production of the motion picture, including notably the charges made by the film's distributors, and costs and charges of loans made by bankers. Neither motion picture had sufficient gross rentals to meet these production costs, so that there was no recovery to the taxpayer's class of investor in either venture.

(7) The losses on said motion pictures were sustained by such investors in common with the corporation, as it is found.

Upon the foregoing facts and findings and all the evidence herein, the State Tax Commission hereby

DETERMINES:

(A) That the additional Assessment No. AA-884113 dated August 9, 1955 for 1952 was not untimely, having been made within three years of the related return, pursuant to the provisions of

Tax Law Section 373 so providing; and that the actual collection of the amounts assessed was not untimely, in view of the provisions of the Tax Law Section 381 providing for collection of a valid assessment at any time.

The said assessment for 1952 was correct; and it is accordingly affirmed.

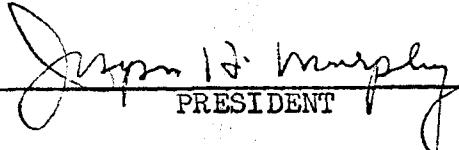
This assessment has been paid in full and is discharged.

(B) That the additional Assessment No. B-788692 dated June 6, 1960 for the year 1957, assessing the normal tax due in the amount of \$119.99 was incorrect. Accordingly, it is cancelled in full.

The loss was a loss other than a capital loss in a transaction undertaken for profit pursuant to provision of Tax Law Section 360.5, and the ordinary deduction claimed should have been allowed.

Dated: Albany, New York, this 12th day of May, 1969.

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER