

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications

of

ESTHER LEVITOW, MIRIAM NICHOLSON AND  
GUY NICHOLSON

Doing Business under the Name and Style  
of the K.G.O. Company, a partnership,  
for Revision or Refund of Personal  
Income Taxes under Article 16 of Tax  
Law for the Years 1949 through 1955

HEARING UNIT - File Copy  
TAX *Income*  
ART. *16* SECS. *374, 376*  
KEY WORDS *Penalties*

CROSS REFS. *None*

CASE LAW CITATIONS *None*

REMARKS *See Memo  
in Law Bureau  
files; same  
page*

The State Tax Commission having assessed two penalties against the said taxpayers pursuant to provision of Tax Law section 374 of Article 16 for failure to file partnership returns for the years 1949, 1950 and 1951 and for the years 1952 through 1955, respectively, and the said taxpayers having filed applications for revision or refund related to such penalties and such applications having been denied, and a hearing having been held on May 12, 1964 at the offices of the New York State Department of Taxation and Finance, 80 Centre Street, New York, New York, before Francis X. Boylan, Hearing Officer; and the taxpayer having appeared by Jerome J. Kahan, Esq. of New York, New York, and Harold N. Gast, Esq. having also been present on behalf of the taxpayer, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notice of additional assessment B-197387 dated November 21, 1956, the Department of Taxation and Finance pursuant to provision of section 376 of the Tax Law imposed a penalty of \$500 against Esther Levitow, Miriam Nicholson and Guy Nicholson, individually and as co-partners doing business as the K.G.O. Company, a partnership. The said penalty was so

imposed for failure to file a partnership return for the years 1949, 1950 and 1951 in accordance with the requirements of Tax Law section 368. Thereafter, by notice of additional assessment B-995428 dated January 4, 1962, a further penalty pursuant to the provisions of Tax Law section 376 was imposed against the said taxpayers for a failure to file such a partnership return for the years 1952, 1953, 1954 and 1955.

(2) The said taxpayers, as a partnership in the years under consideration operated a store called the Kew Gardens Outlet Shop at 81-17 Lefferts Boulevard, Kew Gardens, New York.

(3) In these years under consideration, the individual taxpayers filed individual income tax returns, but paid no tax or only nominal amounts, and such returns did not affirmatively show that the amounts so reported reflected their full distributive shares of the partnership earnings.

(4) The taxpayers did not establish adequately either at the formal hearing or a previous informal conference that it was impossible for them to comply with the requirement of filing a partnership return. The fact that there was a change of accountants in or about 1955 did not justify the failure to comply, it is found; and assuming, as was claimed, that the basic records at that time were in the said accountant's possession, it was not adequately established, as it is found, either that they were not ever finally returned, or that, if not returned, they could not have been obtained by legal proceedings, or that in the absence of such records it was actually impossible for the taxpayers to have filed the returns lawfully required.

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

DETERMINES:

(A) That pursuant to provisions of Tax Law section 368, the taxpayers who conducted a partnership were lawfully required to file a partnership return and pursuant to Tax Law section 374, the aforesaid penalties were lawfully imposed.

(B) That no adequate justification to permit remitting said penalties having been found, the said penalties in the amounts of \$500 by assessment dated November 21, 1956 and \$750 by assessment dated January 4, 1962 imposed against the said taxpayers, Esther Levitow, Miriam Nicholson and Guy Nicholson, individually and as co-partners are affirmed, and it is SO ORDERED.

Dated: Albany, New York this 19th  
day of September , 1969 .

STATE TAX COMMISSION

Norman Gallivan  
COMMISSIONER

Abraham K. Kessler  
COMMISSIONER

Milton Koenig  
COMMISSIONER