

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY LA PIDUS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

**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 28th day of December , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Henry LaPIdus (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Henry LaPIdus
c/o Walter S. Newman
175 Main Street
White Plains, 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

28th day of December , 1971.

Martha Funness

Paul Zimmerman

STATE OF NEW YORK
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of December, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter S.

Newman

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Walter S. Newman, C.P.A.
175 Main Street
White Plains, 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

28th day of December, 1971

Walter S. Newman

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HENRY LA PIDUS	:	DETERMINATION
for Revision or for Refund of Personal	:	
Income Tax due under Article 16 of the	:	
Tax Law for the Year 1959.	:	

Henry LaPidus filed an application under section 374 of the Tax Law for refund of personal income taxes imposed under Article 16 of the Tax Law for the year 1959 which were paid after an additional assessment dated March 31, 1964. Such application was denied and a hearing was demanded. A hearing was duly held on May 14, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. The applicant was represented by Walter Newman, C.P.A. of Resnick & Newman of White Plains, New York and the Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

ISSUE

The issue in this case is whether the applicant can take as a deduction under Article 16 of the Tax Law for the year 1959 a loss carried back from 1962, a year in which Article 22 of the Tax Law was in effect.

FINDINGS OF FACT

1. Mr. LaPidus filed a timely 1959 return under Article 16 of the Tax Law showing taxable income of \$33,733.19. A later assessment increased taxable income by \$14,092.79 to a total of \$47,825.98. His federal return for the same year showed an income of \$59,933.21. He filed a 1962 return under Article 22 of the Tax Law showing a loss of \$44,835.44. He has carried back this loss

for federal purposes to reduce his 1959 federal taxable income by \$30,192.18. His application requests that the same reduction be made in his New York income for 1959.

CONCLUSIONS OF LAW

The net operating loss carryback must be denied. Such a deduction is not granted in Article 16 of the Tax Law. Although such deductions can be taken under Article 22 because of the incorporation therein of federal tax provisions, the adoption of Article 22 made no change in Article 16. This is made clear specifically with respect to loss carryovers in section 116.6(b) of the regulations. Generally, the provisions of one Article of the Tax Law must be read independently of provisions of other Articles. The provisions for net operating losses found in Articles 9-A and 23 of the Tax Law do not affect either Article 22 or Article 16.

DETERMINATION

The application is denied. The refund is denied.

DATED: Albany, New York

December 28, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER