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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD A. & ROSA MERSEREAU

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961, 1962
and 1963.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Lynn Wilson, 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 25th day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon HAROLD A. & ROSA MERSEREAU (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harold A. & Rosa Mersereau
565 North West 121 Street
Apt. 107
North Miami, Florida 33161
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

25th day of August, 1972.

Maitha J. Funnaro

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon HERBERT M. MATTIES

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

wrapper addressed as follows: Herbert M. Matties
71 State Street
Binghamton, 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

25th day of August, 1972.

Matthew F. Unaro

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 25, 1972

Harold A. & Rosa Mersereau
565 North West 121 Street
Apt. 107
North Miami, Florida 33161

Dear Mr. and Mrs. Mersereau:

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

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD A. & ROSA MERSEREAU	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1961, 1962 and 1963.	:	
	:	

The taxpayers petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1961, 1962 and 1963.

The case was submitted for decision on the material in the file. The taxpayer was represented by Herbert M. Matties, Esq. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Where one of the taxpayers in 1965 repaid money wrongly taken from a trust company in 1961, 1962 and 1963, is he entitled to an operating loss carryback for the years 1961, 1962 and 1963 or a credit on his income tax for 1965 similar to section 1341 of the Internal Revenue Code?

FINDINGS OF FACT

1. Petitioners, Harold A. & Rosa Mersereau, timely filed New York State income tax returns for the years involved.

2. A Notice of Determination of deficiencies in income tax and/or disallowance of refunds for the years 1961, 1962 and 1963 was issued on February 19, 1968, against the taxpayers under File No. 29210178.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Taxpayers' New York income was increased by additional income determined on a federal audit for the years 1961, 1962 and 1963 for \$15,465.98, \$14,844.45 and \$19,085.04, respectively. Subsequently, the taxpayers filed a claim for a net operating loss carryback for each of those years based on the repayment of \$71,257.21 which were taken from the Endicott Trust Company. The claim for a net operating loss carryback was made to the United States Internal Revenue Service and the New York State Income Tax Bureau.

5. The Internal Revenue Service disallowed the claims for net operating loss carrybacks from 1965 but allowed a recomputation of 1965 tax under section 1341(a) of the Internal Revenue Code.

6. The taxpayers contended that they should receive a net operating loss carryback for 1961, 1962 and 1963 or, in the alternative, treatment similar to the credit accorded by the Internal Revenue Service.

7. The Income Tax Bureau asserted that: 1) the deduction was applicable to the year of repayment under federal conformity and the "claim of right doctrine," and 2) there is no state tax credit similar to section 1341 of the Internal Revenue Code allowing an elective tax credit based on the earlier years tax computation.

CONCLUSIONS OF LAW

A. The funds were received in 1961, 1962 and 1963 under "claim of right". The deduction of monies repaid is deductible only in the year of repayment. United States v. Lewis, 340 U.S. 590, Healy v. Commissioner, 345 U.S. 278. George & Inez Kass, State Tax Comm. Dec. March 15, 1971.

B. Adjustment of the taxpayers 1961, 1962 and 1963 returns cannot be permitted because the computation of federal tax under section 1341(a)(5) did not, as a matter of law, change the amount of the taxpayers' federal adjusted gross income or itemized deductions for the years 1961, 1962 and 1963. Joseph W. & Charlotte Alaimo, 330 N.Y.S. 2d 231.


C. The New York State Tax Law does not have an optional credit such as that provided by section 1341 of the Internal Revenue Code.


D. The taxpayers' petition is denied and the determination of the deficiency is sustained.

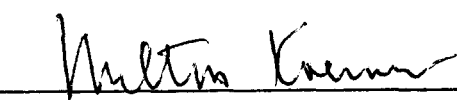
E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
August 25, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
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ALBANY, N. Y. 12227

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HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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of :

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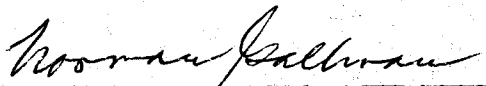
C. The New York State Tax Law does not have an optional credit such as that provided by section 1341 of the Internal Revenue Code.

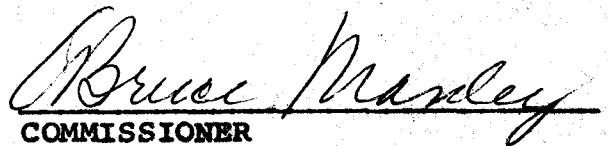
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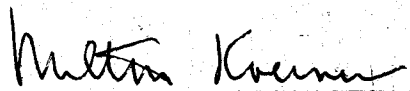
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DATED: Albany, New York
August 25, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

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STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED
No. 592764
MAIL

Undefined

Addressed

Insufficient

No such street

No such address

Harold A. & Rosa Mersereau
565 North West 121 Street

Apt. 107

North Miami, Florida

3858 mailed
8/29/73 me

150128
A-12