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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CHARLES H. STOLL and MERLE L.  
STOLL  
For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~xx~~ 16 of the  
Tax Law for the Year ~~xx~~ 1953.

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

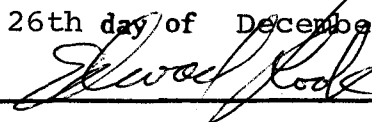
State of New York  
County of Albany

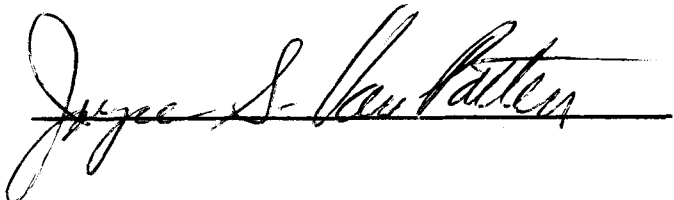
Joyce Van Patten, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of December, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon Charles H. and Merle L. Stoll (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Charles H. Stoll  
Caledonia Road  
Dix Hills  
Huntington, 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

26th day of December, 1973.

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CHARLES H. STOLL and MERLE L. :  
STOLL :

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) 1953. :

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

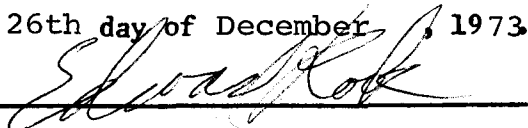
State of New York  
County of Albany

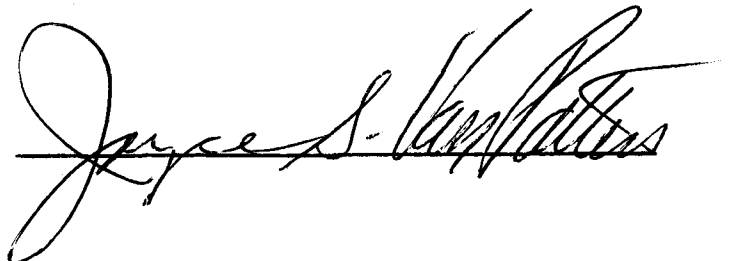
Joyce Van Patten , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of December , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Philip Auerbach,  
C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Philip Auerbach, C.P.A.  
55 West Old Country Road  
Hicksville, 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

26th day of December , 1973.







STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
Mario A. Procaccino  
~~JOHN H. KOENIG, ASST. PRESIDENT~~

A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York  
December 26, 1973

Mr. & Mrs. Charles H. Stoll  
Caledonia Road  
Huntington, New York

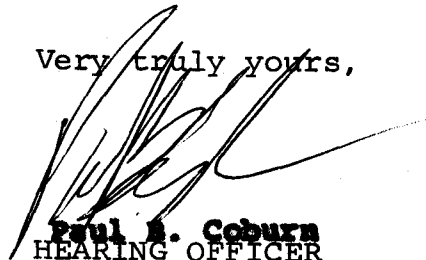
Dear Mr. & Mrs. Stoll:

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

Please take further notice that pursuant to  
Section (s) **375** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **90 days**  
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,



Paul A. Coburn  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
CHARLES H. STOLL and MERLE L. :  
STOLL : DETERMINATION  
for Revision or Refund of Personal :  
Income Taxes under Article 16 of the :  
Tax Law for the Year 1953. :

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Applicants, Charles H. Stoll and Merle L. Stoll, have filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1953. (File No. 368995). A formal hearing was held before Martin Schapiro, Esq., Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 25, 1964, at 3:45 P.M. Applicants appeared by Philip Auerbach, C.P.A.

ISSUE

Was the Notice of Additional Assessment for the year 1953 issued against applicants, Charles H. Stoll and Merle L. Stoll, barred by the statute of limitations?

FINDINGS OF FACT

1. Applicants, Charles H. Stoll and Merle L. Stoll, filed a New York State income tax resident return for the year 1953. The return was filed during the month of April 1954. They reported thereon a loss of joint venture income from Wolf Hill Farm of \$11,423.50 and capital gains in the amount of \$67,454.75 from the sale of certain properties, including the receipt of liquidating dividends in the sum of \$10,000.00.

2. On December 16, 1955, the Internal Revenue Service pursuant to its audit issued a notice of change in net income against applicants, Charles H. Stoll and Merle L. Stoll, increasing the partnership

income reported in the amount of \$3,123.20, disallowing certain taxes and deducted expenses and disallowing the \$10,000.00 liquidating dividends as capital gains and declaring same to be ordinary income. It allowed the remaining \$57,454.75 as capital gains.

3. On February 27, 1956, applicants, Charles H. Stoll and Merle L. Stoll, filed with the Income Tax Bureau a Notice of Change in Net Income by United States Treasury Department Pursuant to Section 367 of the New York State Tax Law in which they reported the changes in income referred to in the prior paragraph.

4. On December 23, 1957, the Income Tax Bureau issued a Notice of Additional Assessment against applicants, Charles H. Stoll and Merle L. Stoll, including as additional income the changes made by the Federal audit and further disallowing as capital gains the \$57,454.75 allowed by the Federal audit, declaring the same to be ordinary income.

#### CONCLUSIONS OF LAW

A. That the Notice of Additional Assessment issued against applicants, Charles H. Stoll and Merle L. Stoll, for the year 1953 was issued more than three years from the date of the filing of the return and more than one year from the date of the filing of the Notice of Change in Net Income by United States Treasury Department Pursuant to Section 367 of the New York State Tax Law and therefore it is barred by the statute of limitations unless there was omitted from gross income or capital gain, as stated in the return, an amount which should have been included therein and which is in excess of 25% of the amount of gross income or capital gain as so stated.

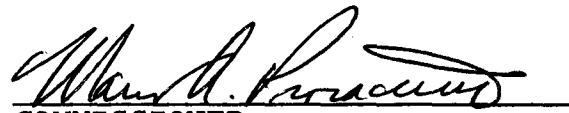
B. That the disclosure of capital gains by applicants, Charles H. Stoll and Merle L. Stoll, in the aforesaid return and notice constituted a disclosure of gross income in accordance with

the meaning and intent of section 373 of the Tax Law and therefore the statute of limitations was not extended by virtue of the fact that a portion of their gross income may have been erroneously reported as being capital gains income.

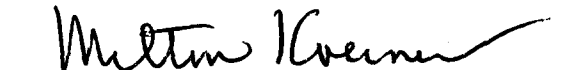
C. That the application of Charles H. Stoll and Merle L. Stoll is granted and the Notice of Additional Assessment issued December 23, 1957, is cancelled.

DATED: Albany, New York  
December 26, 1973

STATE TAX COMMISSION

  
COMMISSIONER

COMMISSIONER

  
COMMISSIONER