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**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**

**OF**

**NELSON C. LATHAM**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF  
THE TAX LAW FOR THE YEAR 1956.**  
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The taxpayer, Nelson C. Latham, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1956 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, N.Y. before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, on May 29, 1964, at which hearing the taxpayer was represented by Fred Malito, 18 Osee Place, Cos Cob, Connecticut and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That during the calendar year 1956 the taxpayer was taxable as a non-resident of the State of New York.
- (2) That during the calendar year 1956, the taxpayer was employed by the New York, New Haven & Hartford Railroad Company as a conductor and received gross wages for the year 1956 in the sum of \$7,222.13; that the taxpayer on certain days made two complete round trips from Stamford, Conn. to Grand Central Terminal; that the total miles from Stamford, Conn. to Grand Central Terminal is 33 miles of which 26 represents New York State miles and 7 represents Connecticut miles; that the total miles on two complete round trip runs consists of 132

miles of which 104 represents New York State miles and 28 represents Connecticut miles; that on certain other days the taxpayer would only work one complete round trip from Stamford, Connecticut to Grand Central Terminal which amounts to a total mileage of 66 miles of which 52 represents New York State miles and 14, Connecticut miles; that the taxpayer was paid on a minimum basis of 150 miles per day regardless of whether the run actually consisted of 132 miles or 66 miles in that day; that the taxpayer worked 138 days during the year 1956; that the total mileage on actual runs during the year 1956 amounted to 37,884 miles, of which 29,848 miles represented total New York State mileage upon such runs; that the percentage of New York State mileage to the total mileage is 78.79%; that the taxpayer received vacation pay during the year 1956 in the sum of \$328.68; that the taxpayer received the sum of \$466.20 for switching performed in Connecticut; that the taxpayer was paid for one day investigation work at Grand Central Terminal in the sum of \$19.36; that the taxpayer was required to keep records and submit reports at the end of each day's work which was performed in Connecticut; that he received the sum of \$466.20 during the year 1956 for such services.

(3) That the taxpayer's representative contended that the salary received by the taxpayer should be apportioned by allocating to New York State only that part of the income as to the actual New York mileage bears to the total minimum daily basic mileage of 150 miles for which payment was received regardless of whether or not such minimum mileage was actually achieved in the daily runs; that the representative further contended that no portion of the vacation pay is to be attributable to New York, but is attributable to Connecticut and that the Tax Commission failed to give consideration to the sum of \$466 in payment of the services of keeping records and submitting reports entirely in Connecticut.

(4) That the taxpayer, as a nonresident railroad employee, was only entitled to apportion his income on a basis of actual mileage within and without New York State and was required to include in gross income that portion of his compensation which was paid for the portion of his run which was located within the State of New York pursuant to Article 452 of the Personal Income Tax Regulations; that the total mileage for runs during the year 1956 was 37,884 and the total New York mileage from such runs was 29,848 or 78.79% of the New York mileage to the total mileage; that further the taxpayer was required to allocate his vacation pay to New York sources in the ratio that his New York State income bore to his income from within and without the State; that the taxpayer, however, was entitled to exclude as out-of-state income the amount of \$466.20 received for switching performed in Connecticut (and previously allowed by the State Tax Commission) and, in addition, an additional amount of \$466.20 for work performed in the maintenance of books and records in Connecticut.

(5) That by reason of Findings Nos. (2) and (4) herein, the taxpayer, during the year 1956, received taxable gross income from sources within the State of New York in the sum of \$4,917.25 within the intent and meaning of Section 351-a of Article 16 of the Tax Law and Articles 452 and 470 of the Personal Income Tax Regulations.

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

**DETERMINES:**

(A) That the tax due from the taxpayer herein, as a nonresident herein, is recomputed as follows:

Gross wages pd. for yr. 1956	\$7,223.11
Less vacation pay	- 388.08
	<u>\$6,835.03</u>
Less time pd. for switching and investigation (\$466.20 + \$19.36)	- 485.56
	<u>\$6,349.47</u>
Less amount for keeping records	- 567.28
Actual wages attributable to runs	<u>\$5,782.19</u>
Compensation on runs within N.Y. 78.79 X \$5,882.29 or	\$4,631.66
Plus amount for 1 day investigation work at Grand Central Terminal	+ 12.16

**TOTAL** **\$4,653.02**

To determine the taxable percentage of vacation pay, the ratio of total earnings, exclusive of vacation, namely \$6,835.03 is applied to New York earnings, exclusive of vacation, \$4,653.02 or the taxable percentage of 68.10

68.10 X vacation pay \$388.08 = taxable vacation	\$264.23
Total New York Income	<u>\$4,917.25</u>
Less optional deduction	- 291.72
Net Income	<u>\$4,625.53</u>
Less personal exemption	- 2,500.00
Taxable balance	<u>\$2,125.53</u>

Taxable as follows:

\$1,000.00 at 2%	\$20.00
\$916.86 at 3%	+ 27.51
Total	<u>\$47.51</u>
Less 1% forgiveness	- 7.17
Tax Due	<u>\$40.34</u>

Tax Withheld	\$57.91
Refund due taxpayer	17.13
Refund to taxpayer on Voucher No.	7.61
Additional Refund due taxpayer	<u>\$22.72</u>

(B) That on the basis of Determination (A) above, the taxpayer is entitled to an additional refund of \$9.72 and no more; that no further recomputation, resettlement or revision of the taxes due can be made herein and that the taxpayer's application for revision or refund with respect to the year 1956, except as indicated herein, is hereby denied; that the

sum of \$9.72 should be refunded to the taxpayer, AND IT IS  
SO ORDERED.

Dated: Albany, New York on this 12th day of March , 1945 •

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

*Donald C. ...*

Commissioner

*James J. ...*

Commissioner