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STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF
GERTRUDE NETCHER
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1956

The taxpayer, Gertrude Netcher, having duly filed an application for revision or refund under Article 16 of the Tax Law for the year 1956 and a hearing having been held in connection therewith before Martin Schapiro, Hearing Officer, of the Department of Taxation and Finance, on January 15, 1965, at which hearing the taxpayer appeared personally and was also represented by Joseph A. Nuccio, Esq., her attorney, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during 1956, the taxpayer, Gertrude Netcher, was a resident of the State of New York; that the taxpayer was divorced from her husband on December 21, 1928; that on December 11, 1928, she entered into an agreement with her husband and husband's mother under which she was to receive \$1,250 per month as long as she did not remarry; that the taxpayer has never remarried; that such agreement was binding upon the heirs and legal representatives of the husband who died in January, 1953, and of the husband's mother who died in December, 1954; that in 1955 the taxpayer filed claims against both estates for arrearage and alimony payments and settlement of future alimony claims; that the arrearages were settled for \$15,000 which were reported by the wife as alimony income on her returns; that in addition, a settlement was entered into in the amount of \$208,000 in consideration of the elimination of all

future periodic alimony payments and the release of the estate from future alimony claims; that on January 27, 1956, the taxpayer purchased from a life insurance company a monthly annuity in the amount of \$916.67 paying for such annuity the sum of \$205,960; that the annuity provided that in the event of the death of the annuitant taxpayer her designated beneficiary would receive the difference between the purchase price and the sum of the annuity payments paid to the taxpayer; that the investment in the annuity contract was computed by the company to be in the sum of \$169,287; that the total amount of annuity payments received by the taxpayer during the year 1956 was in the sum of \$10,083.33; that the taxpayer only reported as annuity income on her 1956 return the sum of \$5,078.61, excluding from the total annuities received the amount of \$5,004.72, which amount is 3 per cent of the aforesaid investment in the annuity.

(2) That an assessment was thereafter issued for the year 1956 (Assessment No. B-421849 dated April 25, 1958) imposing a tax on the excluded amount of \$5,004.72 on the ground that the entire money received as annuity was alimony income.

(3) That the settlement provided for a lump sum settlement in the amount of \$208,000 in discharge of all future alimony payments; that such lump sum payment was paid to the taxpayer; that the taxpayer herself subsequently purchased the annuity.

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

DETERMINES:

(A) That the amounts received by the taxpayer under the annuity contract were not alimony income, but were annuity payments

the annuity income from which was properly reported by the taxpayer in her return.

(B) That, accordingly, the assessment (Assessment No. B-421849 dated April 25, 1958) issued against the taxpayer is incorrect and is hereby cancelled and stricken from the record.

DATED: Albany, New York, this 5th day of May, 1965.

THE STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

IRA J. PALESTIN

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: GERTRUDE NETCHER, application for revision or refund of an assessment of personal income taxes for the year 1956

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on January 15, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not payments received under an annuity contract are annuity payments entitling the taxpayer to exclude a portion thereof from the return or are payments made in lieu of alimony and reportable in their entirety as alimony income.

The facts more fully set forth in the proposed determination disclose that the taxpayer was divorced from her husband on December 21, 1928. On December 11, 1928, she entered into an agreement with her husband in which she was to receive \$1,253 as long as she did not remarry. The taxpayer never remarried. The agreement was binding upon the heirs and legal representatives of the husband who died in January 1955. A settlement with the estate was made in the amount of \$208,000 in consideration of the discontinuance of all future alimony payments.

Former Counsel issued an opinion to the taxpayer's attorney to the effect that where a lump sum settlement was made in consideration of discontinuance of future alimony payments, such lump sum payment is not includible in the gross income of the taxpayer.

The Income Tax Bureau in denying the taxpayer's application for revision or refund held that Counsel's opinion was based on a premise that a lump sum payment had been made, but that no lump sum settlement was made and that the annuity payments, therefore, constituted alimony income, taxable in their entirety.

It is clear from the record, however, that a lump sum settlement was made and paid by the estate to the taxpayer in full discharge of any future alimony payments, and that a substantial

portion of the lump sum settlement was, subsequently, invested by the taxpayer in an annuity. Accordingly, it is my opinion that the annuity payments did not constitute alimony income, but were taxable solely as annuity income permitting an exclusion of 3 per cent of the amount invested in the annuity contract. I have, therefore, prepared a proposed determination cancelling the assessment.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

Hearing Officer

MS:ca
Enclosure
April 15, 1965

Approved