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STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

CARLYLE S. SMITH &
EVELYN A. SMITH, his wife

FOR REVISION OR REFUND OF FEDERAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1960.

The taxpayers having filed a New York State income tax resident joint return for the year 1960 in which they set forth that they resided at 5 John Street, Freehold, New Jersey; that their residence was changed from the State of New York to the State of New Jersey on October 1, 1960; that they requested a refund of \$76.79; that the taxpayers' claim for refund was denied because of their failure to file an additional non-resident return for the period during which they occupied the status of non-residents and submit additional information requested; that on November 30, 1961 the taxpayers filed a demand for a hearing with respect to their claim for refund; that on December 3, 1961 a notice of hearing was mailed to the taxpayers scheduling a hearing before Solomon Gies, Hearing Officer of the Department of Taxation and Finance, at 80 Centre Street, New York City, N.Y. for the 7th day of January, 1965 at 9:00 o'clock A. M.; that the taxpayers defaulted in appearance and the record as presently constituted having been reviewed and examined,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a New York State joint income tax resident return for the year 1960 in which they set forth that they were residents of the State of New York during

the year 1960 but became non-residents on October 1, 1960; that their Federal adjusted gross income for the year 1960 amounted to \$5,799.45; that their total itemized deductions amounted to \$1,868.93; that their New York State itemized deductions amounted to \$2,091.74; that they claimed a refund of \$76.79.

(2) That the Department of Taxation and Finance wrote the taxpayers on July 7, 1961 that when a change of residence occurs during the taxable year, the taxpayer is required to file a resident return covering the period of time of residence and that a non-resident return should be filed covering the period during which the taxpayers occupied the status of non-residents; that the taxpayers were requested to submit a statement disclosing the itemized deductions reported on their Federal return and a segregation of the amounts therein attributable to the period before and after the change of residence; that upon the receipt of such information the proper adjustments would be made and the claim for refund would be processed; that the taxpayers failed to file the additional return for the period during which they occupied the status of non-residents and failed to submit the requested information; that as a result of such failure on the part of the taxpayers the Department of Taxation and Finance denied their application for refund on October 30, 1961; that on November 30, 1961, the taxpayers filed a demand for a hearing with respect to their claim for refund.

(3) That because of the failure of the taxpayers to file a non-resident return during which period they occupied the status of non-residents and the requested information as set forth in Finding No. (2) above, the Department of Taxation and Finance was unable to determine the tax liability of the taxpayers and process the refund claimed by them upon their return.

Based upon the foregoing findings and all of the

evidence presented herein, the State Tax Commission hereby

DETERMINED:

(A) That the taxpayers failed to comply with the requirements of Section 367 (a) of the Tax Law as amended by Chapter 703, Section 2 of the Laws of 1959 effective April 21, 1959 in that they failed to file a non-resident return during the period in 1960 which they claimed to occupied the status of a non-resident; that under the provisions of subdivision of Section 367 a non-resident is not entitled to deductions authorized by Section 360 unless he makes a complete return of his gross income both within and without the State; that Article 431 of the Personal Income Tax Regulations permits deductions of a non-resident only if and to the extent that they are connected with income arising from sources within the State.

(B) That, accordingly, no recomputation, revision or recalculation of the taxes for the year 1960 can be made and the taxpayers' application for refund be and the same is hereby denied.

DATED: Albany, New York on the 26th day of April , 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin & Macduff
FROM: Solomon Sies, Hearing Officer
SUBJECT: CARLYLE S. SMITH & EVELYN A. SMITH, his wife

Application for Revision or Refund of
Personal Income Taxes under Article
16 of the Tax Law for the year 1960.

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York, New York, N.Y., for January 7, 1965. The taxpayers defaulted in appearance at said hearing.

The issue involved herein is whether the taxpayers who occupied the status of both residents and non-residents during the year 1960 are entitled to a refund where they failed to file a non-resident return for the period during which they claimed to occupy the status of non-residents and failed to submit additional information requested regarding the itemized deductions claimed by them.

The taxpayers filed a New York State resident joint return for the year 1960 in which they set forth a change of residence on October 1, 1960. They claimed a refund upon their return which was denied because of their failure to submit a non-resident return for the period during which they claimed to occupy the status of non-residents and failed to submit a statement disclosing the itemized deductions claimed by them on their Federal income tax return with a segregation of the amounts therein attributable to the period before and after the alleged change of residence. Instead of complying with the Department's request, the taxpayers filed a demand for a hearing.

The return indicates a deduction of \$90.00 for contributions to a church located in New Jersey but fails to disclose what portion of the other itemized deductions is attributable to New York. The total itemized deductions claimed by the taxpayers on their return amounted to \$2,091.74.

Article 111 (b) of the Personal Income Tax Regulations permits a resident taxpayer the election to claim as a deduction 10% of his gross income or \$500.00 whichever is less in lieu of all deductions otherwise allowable. It further provides that "any election so made shall be irrevocable with respect to the taxable year for which it is so made."

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RE: CARLYLE S. SMITH & EVELYN A. SMITH, his wife

Subdivision 1 of Section 367 of the Tax Law provides that a taxpayer other than a resident shall not be entitled to the deductions authorized by Section 360 unless he shall make a complete return of his gross income within and without the state. Article 431 of the Personal Income Tax Regulations allows in general the deductions from gross income to a non-resident the same as allowed to a resident except that they are allowed only if, and to the extent that, they are connected with income arising from sources within the state of New York and further provides that a non-resident taxpayer shall not be entitled to any deductions unless a return discloses his total gross income from sources both within and without the state.

Section 367 (a) as amended by Chapter 783 Section 2 of the Laws of 1959 effective April 23, 1959 requires the filing of two returns of the taxpayer who changes his status from that of a resident to that of a non-resident.

I am of the opinion that the refund claimed by the taxpayers on their return should be denied because of their failure to file a return during the period in which they occupied the status of non-residents and their further failure to comply with the request to furnish additional information regarding the deductions claimed by them so that a proper determination could be made regarding their tax liability.

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

MAR 19 1965

SOLOMON SIES

Hearing Officer

Approved

Approved.

April 14, 1965