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Income Tax Determinations
Spence, James R. A-2
Mary J.

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS
OF
JAMES R. SPENCE, Deceased and
MARY J. SPENCE, Individually
FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEARS 1956 AND 1957.

Mary J. Spence, the taxpayer herein, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1956 and 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 1st day of February, 1965 before Solomon Fies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, James R. Spence, (now deceased) and Mary J. Spence, filed joint New York State income tax returns for the years 1956 and 1957; that included in said returns was set forth income received by the taxpayer, Mary J. Spence, from a trust fund in which she was named the beneficiary; that the taxpayers committed a mathematical error in the calculation of normal tax due for the year 1956; that the amount calculated by the taxpayers to be due was \$671.90 whereas the actual amount due should have been \$606.90; that the taxpayers paid the amount of \$903.91 but failed to pay the balance due of \$67.99 for the year 1956; that the taxpayers for the year 1957 made an apparent mathematical error in the calculation of tax and computed the same in the sum of \$686.35 instead of the correct amount due which is \$366.35; that the taxpayers failed to pay any part of said taxes due for the year 1957.

(2) That the State Tax Commission thereafter issued assessments for the years 1956 and 1957 for the amount of tax remaining unpaid together with interest; that the taxpayer Mary J. Spence contended in her application for revision or refund and at the hearing that she was unable to pay the balance of the tax due and owing for each of said years.

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

DETERMINES:

(A) That since the taxpayers filed joint returns for the years 1956 and 1957, their tax liability was joint and several and that the surviving spouse is independently liable for the amount due for the years 1956 and 1957; that, accordingly, the assessments (Assessment Nos. B-835411 and B-791197 for the years 1956 and 1957, respectively) are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's applications for revision or refund with respect to the aforesaid assessments be and the same are hereby denied.

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

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 & Macduff**

FROM: **Solomon Sies, Hearing Officer**

SUBJECT: **JAMES R. SPENGE, Deceased and
MARY J. SPENGE, Individually**

**1956 Assessment No. E-838411
1957 Assessment No. E-791197**

Article 16

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on February 1, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

James R. Spence and Mary J. Spence, his wife, filed joint New York Income tax returns for the years 1956 and 1957 but only paid part of the tax for 1956 and paid no part of the taxes due for 1957. The returns included income of the wife which she received from a trust fund. The husband died in 1958. The assessments were made against the taxpayers correcting an error in the calculation of normal tax and for failure to pay the full amount of the taxes computed to be due on the returns filed by them. The taxpayer's wife contends that she is unable financially to pay the taxes for the years 1956 and 1957. The assessments should, therefore, be sustained and the taxpayers' applications for revision or refund for the years 1956 and 1957 should be denied.

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

FEB 18 1965

/s/ SOLOMON SIES
Hearing Officer

Approved

Approved

SS/kk
Encls.

April 14, 1965