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BUREAU OF LAW

MEMORANDUM

1966
Income Tax Determinations
A-2
Kaeszy, Stefan

TO: Commissioners Murphy, Palastin and Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: Stefan Kaesz, application for revision
 or refund of personal income taxes under
 Article 16 of the Tax Law for the year 1958

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y. on November 9, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The substantive question presented herein is the propriety of the penalty assessment in the sum of \$500 imposed for failure to supply information with respect to a deduction of Federal income tax interest in the amount of \$2,855.19 taken on the 1958 New York State tax return. The secondary issue is whether the taxpayer filed a timely application for revision or refund with respect to the aforementioned assessment.

The assessment was issued on December 11, 1959. On December 22, 1959, the taxpayer's representative wrote a letter to the Income Tax Bureau protesting the assessment. The form IT-113 was not filed until May 26, 1961. The Income Tax Bureau denied the taxpayer's application for revision or refund on the ground that the application for revision or refund was not timely filed. I am of the opinion, however, that the letter of protest, filed on December 22, 1959, constitutes a timely filing of the taxpayer's application for revision or refund.

With respect to the substantive issue involved, the Income Tax Bureau on April 8, 1959 wrote to the taxpayer as follows:

"In the audit of your 1958 New York State income tax return, a deduction has been claimed for Federal income tax interest in the amount of \$2855.19. In support of this deduction, it is requested that you submit a complete explanation, showing the years involved and give full details of the adjustments made."

Thereafter the assessment was issued on the failure to supply the information requested. The taxpayer after the issuance of the assessment pointed out that a similar assessment was issued and cancelled against one Benjamin Kurz with whom the taxpayer was in partnership, and a similar assessment had been cancelled. In response thereto on March 18, 1960 a letter was written to the taxpayer which provides in part as follows:

"This office is in receipt of your letter of December 22, 1959, protesting the above assessment.

"You are advised that the information submitted in your letter is insufficient to permit the cancellation or adjustment of the above assessment and before any action can be taken, it will be necessary that you submit a breakdown of the interest paid the Federal Bureau of Internal Revenue to indicate the amount of such interest that included penalty, and the amount that consisted of interest. It will also be necessary that you submit a copy or copies of the Federal audit or audits which resulted in such interest payments."

It appears that the U. S. Internal Revenue Service audited the taxpayer's Federal return for the year 1945 and issued a notice of deficiency for that year. The taxpayer never filed a form IT-115 reporting the Federal changes for the year 1945. The taxpayer, it is claimed, elected to deduct his interest accumulating on said notice of deficiency until it was paid in the year 1956.

The taxpayer testified that in 1944 a partnership was formed under the name of American Hyleptic Co. consisting of the taxpayer, Charles Kurz and Lillian Kurz; that the partnership continued until 1948 when a corporation was organized with the same principals, succeeding the co-partnership; that the Federal Government, upon audit, revised the profit sharing distribution of the partnership and assessed each of the three partners accordingly.

An independent audit was made with respect to the returns of the partnership and the taxpayer and his partner up to and including the year 1944. In such independent audit various deductions were disallowed the taxpayer. It was never shown, however, that the taxpayer had omitted gross income from the returns.

I am of the opinion that since the taxpayer had failed to submit the information requested in the letter of April 9, 1960 that the imposition of a penalty assessment was proper. However,

I believe that the Tax Commission in its discretion should reduce the penalty to the sum of \$150 for the reasons set forth below:

In the Commission's letter of March 18, 1960 one of the objections by the State Tax Commission was that the taxpayer had failed to submit a breakdown of the interest paid to the Federal Government to indicate the amount which was in fact penalty and which was interest. However, even if the entire deduction should have been disallowed, and an assessment issued, the assessment would have been in the amount of \$73.48. Furthermore, even if accumulated interest of 12% per annum is added to this amount up to the date of the determination, the total is approximately \$150.

The further reason given for the refusal to cancel the penalty assessment was that the taxpayer failed to submit copies of the Federal audit or audits which resulted in such interest payment. The preliminary conference officer stated that the forms IT-115's, Reports of Federal Changes, were necessary to reissue an assessment for the fiscal year including June 30, 1948 against Benjamin Kurz which may have been cancelled in error, and to issue an assessment against the taxpayer for the year 1948 on the basis of the taxpayer's failure to file a report of Federal Changes.

On July 1, 1949, Chapter 373 of the Tax Law was amended to provide that where there has been a failure to report Federal Changes, an assessment can be made at any time. Since however, the normal three-year period of assessment against the taxpayer on his 1948 return had expired on April 15, 1949, prior to the change in the Tax Law, the period was closed and the taxpayer was not required to report Federal Changes. Nor did the Tax Commission have the right to issue an assessment against him based on such changes.

Since, therefore, the only possible assessment which may have been issued against this taxpayer would have been one which disallowed the interest deduction because of lack of information, I believe therefore that the penalty should be reduced to the sum of \$150 which represents the additional tax on a disallowance of interest plus interest at the rate of 12% per annum from the due date of the return to the date of the determination.

SOLOMON SIES

Hearing Officer

SS/ta

March 14, 1960

MARTIN SCHAPIRO

Approved

SAUL HECKELMAN

Approved

/s/

/s/

**Computation of Tax Upon Disallowance of Interest
Deduction in the Amount of \$2,055.19**

Taxable balance shown on return	\$3,267.39
Add interest deduction	2,055.19
Total	<u>\$5,322.58</u>
Normal tax on \$5,000	\$ 160.00
Normal tax at 3% of balance of \$322.58	17.12
Total normal tax	<u>\$ 177.12</u>
Less 15% credit	26.56
Balance tax due	<u>\$ 150.56</u>
Tax reported on the return	77.10
Additional tax due on return	73.46
Interest at the rate of 12% per annum from April 15, 1957 to March 15, 1968- 1978	78.60
	<u><u>\$ 152.06</u></u>

STATE OF NEW YORK
STATE TAX COMMISSION

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

The taxpayer herein having filed a timely 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, 80 Centre Street, New York, N. Y. on November 9, 1956, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared personally and was represented by Kahn & Co., Certified Public Accountants, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Stefan Kaesz, filed a 1956 income tax resident return in which he deducted "Federal income tax interest" in the sum of \$7,958.19; that the taxpayer was requested to submit a complete explanation for the deduction of Federal income tax interest paid to the Federal Bureau of Internal Revenue and to give full details of the adjustment made.

(2) That on December 11, 1956, the Department of Taxation and Finance issued an assessment (Assessment No. B-705870) against the taxpayer for the year 1956 imposing a penalty in the sum of \$600 for failure to submit the information requested.

(3) That the taxpayer has failed to submit the information requested, although afforded numerous opportunities to do so.

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

DETERMINES:

(A) That the State Tax Commission properly imposed a penalty assessment because of the failure of the taxpayer to submit the information requested in accordance with the then existing section 375(3) of the Tax Law (now subdivision 4 of such section).

(B) That the penalty, however, is hereby reduced from \$500 to \$150 and the balance of such penalty in the amount of \$350 is hereby cancelled; that to the extent that the assessment is herein modified, the assessment is correct and hereby affirmed, and the taxpayer's application for revision or refund with respect thereto be and the same is hereby denied.

DATED: Albany, New York, on this 31st day of March, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

Commissioner