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MEMORANDUM

Income Tax Determinations
A-Z
Saunders, Margaret T.

TO: Commissioners Murphy and Macduff

FROM: E.H. Best, Counsel

SUBJECT: Margaret T. Saunders
Application for Revision or Refund of Personal Income
Taxes under Article 16 of the Tax Law for the year 1959.

Margaret T. Saunders
Petition for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under Article 22 of the
Tax Law for the years 1960, 1961 and 1962.

A hearing with reference to the above matters was held at 80 Centre Street, New York, New York on November 24, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue raised is whether all monies received by the taxpayer under a separation agreement for her support and for the support of her children are includible in her total income.

The taxpayer entered into a separation agreement dated April 4, 1958, which was amended September 16, 1958, which provided for the payment of \$4,940 per year for the support of the taxpayer and two children of the marriage. The agreement did not provide that a specific amount of such payment was for the support of the children.

During all the years in issue the taxpayer received \$4,940 per year. Pursuant to the agreement, taxpayer, however, reported income for alimony on her personal income tax return for the years 1959, 1961 and 1962 in the amount of \$780 contending that the balance of \$4,160 was intended for the support of the children. No income tax return was filed by the taxpayer for 1960.

An assessment in the amount of \$44.48 for 1959 and a notice of deficiency for the years 1960, 1961 and 1962 in the amount of \$153.83 were issued holding the entire amount taxable to her as alimony payments in accordance with provisions of section 359(8) and section 612 of the Tax Law.

In my opinion since no specific payments were set forth in the agreement for support of the children, the entire amount is includible in her gross income as alimony payments.

In Commissioner of Internal Revenue v. Lester, 366 U.S. 299, 6 L. ed. 2d 306, the Court in construing the Federal statute, which is parallel to section 359(8) of the Tax Law, held that the agreement must expressly specify or "fix" a sum certain or percentage of the payment for child support before any of the payments are excluded from the wife's income. This Department's regulations, which were promulgated in 1956, contain a provision to the same effect (20 NYCRR 252.12(d)).

Proposed determinations have therefore been prepared sustaining the assessment notice of deficiency. Kindly return the files after disposition.

/s/

E. H. BEST

Counsel

September 28, 1966

FVD:mg

(Oct. 6, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

MARGARET T. SAUNDERS

**FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959**

The taxpayer herein having duly filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York at which hearing the taxpayer appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Margaret T. Saunders, filed an income tax return for the year 1959 and that the taxpayer reported receiving a sum of \$780 as alimony in her return and that an assessment was issued for the year 1959 in the amount of \$4,48 (Assessment No. AB-654,799B) on the grounds that the taxpayer received \$4,940 from Francis Saunders, as alimony, rather than \$780 as reported.

(2) That the taxpayer entered into a separation agreement dated April 4, 1958 which was amended September 16, 1958 which provided for the payment of the sum of \$4,940 per year for the support of the taxpayer and the support of two children of the marriage; that the agreement did not provide that a specific amount of the payment was for the support of the children.

(3) That the taxpayer received payments totaling \$4,740 from Francis Saunders during the year 1959 pursuant to the separation agreement.

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

DETERMINES

(A) That since the separation agreement did not provide for a specific amount of the payment for the support of the children, all the payments are includible as alimony payments under Section 159(b) of the Tax Law and are required to be reported as income.

(B) That the assessment for additional taxes (Assessment No. AB-054799B) for the year 1959 is affirmed; and that such assessment is correct and lawfully due and owing together with interest and other statutory charges, and does not include any other taxes or charges which are not lawfully due and owing.

Dated: Albany, New York this 10th day of October 1960.

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

JAMES R. MACDUFF
COMMISSIONER