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*Income Tax Determinations*  
*Vitacco, Carmen L. A-2*

**Commissioners Murphy, Palestin & Macduff**

**Solomon Sies, Hearing Officer**

*Carmen*  
**GARE L. VITACCO**

**Application for Revision or Refund of  
Personal Income Taxes under Article 16  
of the Tax Law for the years 1956 and  
1957.**

A hearing with respect to the above matter was held before me at 80 Centre Street, New York, N.Y. on March 31, 1966. The appearances and evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The sole issue involved herein is whether the taxpayer is entitled to a waiver of 20% penalty and 1% interest per month imposed by the district tax office on delinquent income tax returns filed by him for the years 1956 and 1957 which he paid under protest.

Prior to 1956, the taxpayer was a resident of Pennsylvania which has no state income tax. He became a resident of the State of New York in March, 1956 and has lived and worked in New York since then. He failed to file state income tax returns for the years 1956 and 1957. He resided at four (4) different addresses in this state since 1956.

The taxpayer received a letter from the New York District Office, dated April 16, 1964, which was addressed to him at his former address at 4359 Furman Avenue, Bronx, N.Y. He appeared at the New York District Office on April 30, 1964 and was directed to and did execute delinquent income tax returns for the years 1956 and 1957 which included a 20% penalty and interest at the rate of 1% per month. The taxpayer paid the tax, penalty and interest under protest and at the same time filed applications for a refund of the penalty and interest. The district office on the face of returns placed the initials "H.C.", which means "Hard Core". This appellation applies in the case of a taxpayer who fails to co-operate or ignores numerous requests to appear before the District Office.

The taxpayer claims that he was unaware of the fact that he was required to file New York State income tax returns for the years in question since Pennsylvania does not require the filing of state income tax returns; that he appeared at the District Office as soon as he received the written notification to do so.

RE: CARL L. VITACCO

The basic tax for the year 1956 amounts to \$31.73 and the 20% penalty plus 1% interest per month amounts to \$44.68. The basic tax for the year 1957 amounts to \$48.04 and the 20% penalty plus 1% interest per month amounts to \$44.68.

I am of the opinion that the taxpayer's failure to file the New York State income tax returns when due was attributable to his ignorance of the law requiring the filing of returns; that he did not ignore any requests of the Income Tax Bureau to appear; that the penalty and interest imposed is too harsh and should be reduced to 5% penalty and interest at the rate of 1/2 of 1% per month.

Accordingly, for the year 1956 the penalty of 5% amounts to \$1.76, and interest at the rate of 1/2 of 1% per month amounts to \$16.75, total amount of penalty and interest, \$18.71; so that the amount of refund the taxpayer would be entitled to for said year amounts to \$14.51. With respect to the year 1957 the penalty of 5% amounts to \$2.40, and interest at the rate of 1/2 of 1% per month amounts to \$20.42, total amount of penalty and interest, \$22.82; so that the amount of refund for said year amounts to \$21.86. The total amount of refund for the years 1956 and 1957 amounts to \$36.37. I believe that said amount should be refunded to the taxpayer without interest.

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

JUN 10 1966

SOLOMON SIES

Hearing Officer

/s/ MARTIN SCHAPIRO  
Approved

/s/ SAUL HECKELMAN  
Approved

SS:hn

( June 30, 1966 )

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**

**OF**

**CARMEN L. VITACCO**

**FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEARS 1956 AND 1957**  
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The taxpayer, Carmen L. Vitacco, 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, at 60 Centre Street, New York, N.Y., on the 31st day of March, 1964, before Solomon Sles, 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 prior to 1956 the taxpayer was a non-resident, being a resident of the State of Pennsylvania; that the taxpayer became a resident of the State of New York in March, 1956 and has resided in this State ever since; that during the year 1956 the taxpayer was employed in the City and State of New York and his total earnings for said year amounted to \$2,509.74; that during the year 1957 the taxpayer was employed in the City and State of New York and his total earnings for said year amounted to \$4,016; that the taxpayer failed to file New York State income tax returns for the years 1956 and 1957 when the same became due.

(2) That on or about April 14, 1964 the taxpayer received a certified letter from the New York State Income Tax Bureau, New York District Tax Office, requiring him to appear in connection with the filing of income tax returns for the years 1956 and 1957; that, accordingly, the taxpayer appeared at said District Office and was directed to and did execute and file delinquent income tax returns for

the years 1956 and 1957 on April 30, 1964; that the taxpayer's failure to file New York State income tax returns for the years in issue was due to his lack of knowledge of the law; that the taxpayer appeared at the district tax office when he received a notice to do so.

(3) That on the delinquent income tax return filed by the taxpayer for the year 1956 he reported a taxable balance on item 1) of said return in the sum of \$1,508.77, and normal tax due in the sum of \$31.73; that the taxpayer was directed to include upon said return the additional amount of \$33.32 which represents a 20% penalty plus interest at the rate of 1% per month up to May 15, 1964; that on the delinquent income tax return filed by the taxpayer for the year 1957 he reported a taxable balance on item 1) of said return in the sum of \$1,934.91, and normal tax due in the sum of \$48.04; that the taxpayer was directed to include upon said return the additional amount of \$44.64 which represents a 20% penalty plus interest at the rate of 1% per month up to May 15, 1964; that on April 30, 1964, the taxpayer paid the tax, penalty and interest for the years 1956 and 1957 under protest and simultaneously therewith filed applications for refund of the penalty and interest imposed for said years; that the penalty of 20% and interest at the rate of 1% per month was based upon the failure of the taxpayer to respond to requests to appear at the district tax office to file delinquent returns for the years in issue.

(4) That subdivision 1, section 376 of the Tax Law, in effect during the years in issue provided, in part, as follows:

"If any taxpayer, without intent to evade any tax imposed by this article, shall fail to make a return of income or pay any tax if one is due at the time required by or under the provisions of this article, but shall, voluntarily make a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per centum thereof, but such additional amount shall in no case be less than two dollars, and an additional one per centum for each month or fraction of a month during which the tax remains unpaid."

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

**DETERMINES:**

(A) That the 20% penalty imposed is hereby reduced to 5% and the interest imposed at the rate of 1% per month is reduced to 1/2 of 1% per month.

(B) That accordingly for the year 1956, the penalty is hereby recomputed in the sum of \$1.76 and interest from April 15, 1957 to May 15, 1964 is computed in the sum of \$16.75; that the total amount of penalty and interest due for said year amounts to \$18.71; that taxpayer is entitled to a refund for said year in the sum of \$14.51; that for the year 1957, the penalty is hereby recomputed in the sum of \$2.40 and interest from April 15, 1958 to May 15, 1964 is recomputed in the sum of \$20.42; that the total amount of penalty and interest for the year 1957 amounts to \$22.82; that the taxpayer is entitled to a refund for the year 1957 in the sum of \$21.86; that the total amount of refund due to the taxpayer for the years 1956 and 1957 is \$36.37; that there shall be refunded to him the sum of \$36.37, without interest; that the taxpayer is not entitled to any further refund; that the taxpayer's applications for revision or refund for the years 1956 and 1957, except as herein modified, be and the same are hereby denied.

**AND IT IS ORDERED.**

Dated, Albany, N.Y., the 8th day of July, 1966.

/s/

JOSEPH H. MURPHY  
**President**

/s/

IRA J. PALESTIN  
**Commissioner**

/s/

JAMES R. MACDUFF  
**Commissioner**