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Income Tax Determinations

Weiss, Moses A-Z

Commissioners Murphy, Palestin & MacDuff

Solomon Sies, Hearing Officer

MOSES WEISS

1952 Assessment #B 841713
1953 Assessment #B 841714
1954 Assessment #B 841715

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on May 18, 1964. The taxpayer stated at said hearing that he desired an opportunity to locate and produce the books and records for the years in issue in order to refute the assessments. At his request notices of continued hearing were mailed to him on January 13, 1965, March 16, 1965, June 23, 1965 and August 19, 1965 scheduling the continuation of the aforementioned hearing for February 4, 1964, May 4, 1965, July 20, 1965 and September 28, 1965, respectively. The taxpayer requested postponements of said scheduled hearings thereafter and on October 21, 1965, a notice of hearing was mailed to the taxpayer scheduling the continuation of the hearing for November 8, 1965 at 2 P.M. The taxpayer defaulted in appearance on said date.

The assessments are based upon Federal Audit of the partnership returns of Noglen Mfg. Co., of which the taxpayer was a partner, for the years in issue, increasing his distributive share therefrom and upon the Federal Audit of his Personal Federal Income Tax Return for the year 1954. The taxpayer did not file any protest of the Federal Audits nor did he file any IT-115's for any of the years involved.

At the hearing the taxpayer stated that he had no available books or records but requested an opportunity to locate and produce them. He requested an adjournment from time to time but was unable to secure any books or records or present any evidence which would indicate that the findings upon Federal Audit were erroneous or incorrect. The taxpayer has indicated that he has instituted an action for malpractice against his former accountants who prepared his tax returns for the years in issue. I advised the taxpayer that upon his request I would issue a subpoena requiring his former accountants to appear at the hearing. However, he was unwilling to do so since he felt that this might prejudice his action against them.

RE: MOSES WEISS

Since the taxpayer has failed to submit any evidence which would warrant a finding that the Federal Audits were erroneous or incorrect, I am of the opinion that the assessments should be sustained.

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

SEP 28 1966

SOLOMON SIES
Hearing Officer

/s/ M. SCHAPIRO
Approved

/s/ S. HECKELMAN
Approved

SS:hm (Oct 5, 1966)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

MOSES WEISS

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS 1952, 1953 and 1954.

The taxpayer, Moses Weiss, having filed applications for revision or refund of personal income tax under Article 16 of the Tax Law for the years 1952, 1953 and 1954 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 18th day of May, 1964 before Solomon Sies, Hearing Officer of the Department of Taxation & Finance, at which hearing the taxpayer appeared personally and stated that he desired an opportunity to locate the books and records for the years in issue to refute the assessments; that, at the request of the taxpayer notices of hearing were mailed to him on January 13, 1965, March 16, 1965, June 23, 1965 and August 19, 1965 scheduling a continuation of the aforementioned hearing for February 4, 1965, May 14, 1965, July 20, 1965 and September 29, 1965, respectively; that the taxpayer requested postponements of said scheduled hearings; that thereafter, and on October 11, 1965 a notice of hearing was mailed to the taxpayer scheduling a continuation of the hearing for November 8, 1965 at 2:00 P.M., the taxpayer having defaulted in appearance thereat, said default having been duly noted, and the matter having been duly examined and considered;

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for the years 1952, 1953 and 1954 in which he included net income representing his distributive share as a partner in the partnership firm of Roglen Manufacturing Co.; that the U.S. Internal Revenue Service audited the partnership returns of Roglen Manufacturing Co. for the

years in issue and the taxpayer's Federal personal income tax return for the year 1954; that as a result of such Federal audits, additional partnership income was disclosed thereby increasing the distributive share of the taxpayer therefrom; that as a result of the Federal audit of the taxpayer's Federal income tax return for the year 1954 additional income was disclosed from Keglen Manufacturing Co. and from Sealtite Building Corp. and in addition, a portion of casualty loss was disallowed and medical expense adjusted to allow no medical expense for said year; that on March 9, 1961, the Department of Taxation & Finance made additional assessments against the taxpayer for the years 1952, 1953 and 1954 (Assessment Nos. B 841713, B 841714 and B 841715, respectively) and accordingly imposed additional normal taxes in the sum of $647.78, $560.79 and $903.71 for said respective years.

(2) That the taxpayer failed to file any Forms IT 115 (Notice of Federal Changes) with respect to the years 1952, 1953 and 1954; that the taxpayer did not file any protests with respect to the Federal audits for the aforementioned years.

(3) That at the hearing, the taxpayer was requested to submit any books, records, papers or other evidence which would warrant a finding that the Federal audits for the years involved herein were erroneous or incorrect; that the taxpayer has failed to submit such evidence, although afforded a reasonable opportunity to do so.

Based upon the foregoing findings and all of the evidence presented herein

The State Tax Commission hereby determines:

That the taxpayer has failed to submit any evidence which would warrant a finding that the Federal audits for the years 1952 and 1953 and 1954 were erroneous or incorrect; that the assessments for the years 1952, 1953 and 1954 (Assessment Nos. B 841713, B 841714 and B 841715, respectively) are correct; that the same 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 filed with respect thereto be and the same are hereby denied.

DATED: ALBANY, N.Y. ON THE 10th DAY OF October, 1966.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

Commissioner

/s/ JAMES R. MACDUFF
Commissioner