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1967 Income Tax Determinations  
BUREAU OF LAW A-2MEMORANDUM *Burton, Sylvia Margolis*

TO: Commissioners Murphy, Macduff and Conlon

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: The application of Sylvia Margolis Burton for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1951

A hearing with reference to the above entitled matter was scheduled before me on January 19, 1967 at 80 Centre Street, New York, New York. The taxpayer defaulted in appearance at the hearing.

The issue involved timeliness of filing the claim for refund and the application for revision or refund.

The taxpayer filed a resident income tax return for 1951 reporting a taxable balance of income of \$6,043.04 and normal tax of \$190.93. Federal audit changes, finally determined on May 31, 1961, reducing taxpayer's income for 1951 by \$1,790.21 were reported on form IT-115 dated September 9, 1961 and filed September 14, 1961. The taxpayer's claim for refund in the sum of \$107.86 was denied on October 26, 1961 as untimely pursuant to subdivision 2 of section 367 of the Tax Law. Taxpayer filed an application for revision or refund, form IT-113, requesting the same refund, on April 26, 1962, contending that such application was timely, if filed within two years of the date of the Federal audit changes.

Section 367(2) of the Tax Law requires a taxpayer to report Federal audit changes within 90 days of the date of final determination of such changes. 20 NYCRR 270.21(a) provides that the taxpayer "must" notify the Tax Commission of Federal audit changes within 90 days of final determination. 20 NYCRR 270.21(b) requires such notification to be made on form IT-115. 20 NYCRR 270.21(d) provides that no refund will be made unless notification is received within the time prescribed.

Accordingly, I am of the opinion that the notification of Federal audit changes was not made timely; that the denial of the claim for refund should be sustained and that the application for revision or refund should be denied.

The decision of the Tax Commission should be substantially in the form submitted herewith.

/s/

Alfred Rubinstein

Hearing Officer

AR:konica

Enc. February 27, '67

February 21, 1967

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
SYLVIA MARGOLIS BURTON  
FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEAR 1951  
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Sylvia Margolis Burton, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1951 and a notice of hearing having been duly served by mail on the taxpayer on December 30, 1966, setting down a hearing for January 19, 1967 at 9:00 A.M. at 80 Centre Street, New York, New York before Alfred Rubinstein, Hearing Officer of the State Tax Commission, and the taxpayer having defaulted in appearing, and a notice thereafter having been served on the taxpayer and her representative by registered mail, according her further opportunity to appear and be heard, and an official receipt of the United States Post Office having been received as proof of delivery of said notice, and the taxpayer not having responded thereto, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a resident personal income tax return for the year 1951, reporting the taxable balance of income of \$6,043.04 and a normal tax of \$190.93; that by audit changes dated May 31, 1961 the United States Treasury Department made a final determination reducing the taxpayer's income by \$1,790.21.

(2) That the taxpayer filed a notice of change in taxable

income on form IT-115 on September 14, 1961, claiming a refund of \$107.88; that the taxpayer's claim for refund was denied on October 26, 1961 as untimely; that the taxpayer filed an application for revision or refund on April 26, 1962 and demanded a hearing.

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

**DETERMINES:**

(A) That neither the claim for refund nor the application for revision or refund filed by the taxpayer was so filed within 90 days of the date of final determination of changes in the taxpayer's taxable income as made by the United States Treasury Department.

(B) That accordingly, the taxpayer's claim for refund was properly denied as untimely, and that the application for revision or refund with respect thereto be and the same is hereby denied.

DATE: Albany, New York on this 3rd day of March, 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
President

/s/

JAMES R. MACDUFF  
Commissioner

/s/

WALTER MACLYN CONLON  
Commissioner