

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations
A-Z
Goldson, Milton H.
and
Muriel

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Application of
 MILTON H. AND MURIEL GOLDSOHN
 For Revision or Refund of Personal
 Income Taxes Under Article 16 of
 the Tax Law for the Year 1957

In the Matter of the Application of
 JOHN AND VIRGINIA KENNEDY
 For Revision or Refund of Personal
 Income Taxes Under Article 16 of
 the Tax Law for the Year 1957

In the Matter of the Application of
 JOSEPH SIKKIND
 For Revision or Refund of Personal
 Income Taxes Under Article 16 of
 the Tax Law for the Year 1957

See also :
 { *Income Tax*
Determin. A-Z
Kennedy, John +
Virginia
(9/27/67)
 { ② *Income Tax*
Determin. A-Z
Sikkind, Joseph
(9/27/67)

A hearing with reference to the above matters was held before me at 60 Centre Street, New York, New York on June 21, 1967. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith. The taxpayers, Joseph Sikkind and John Kennedy were partners. They and Milton H. and Muriel Goldson, who were not partners, were represented by the same attorney. There is a common issue in all of these matters.

The issue involved herein is whether assessments based upon Federal audit changes were timely when they were issued within one year of the filing of notification of Federal changes in net income but issued more than three years after the date for filing of income tax returns.

The taxpayers, John and Virginia Kennedy, and Joseph and Yetta Sikkind filed copies of changes in income resulting from a Federal audit of their 1957 tax returns with the Department of Taxation and Finance on May 6, 1964 following a request of the Income Tax Bureau that they file a notice of change in their Federal taxable income. On August 17, 1964, a notice of assessment (Assessment No. AB 076102) was issued against the taxpayers, John and Virginia Kennedy which assessed additional normal tax and capital gains tax in the amount of \$776.01 based on the Federal changes of their income. Also, on August 17, 1964, a Notice of Assessment (Assessment No. AB 076103) was issued against Joseph and Yetta Sikkind which assessed additional normal tax and capital gains tax in the amount of \$511.18 and which assessment was also based on Federal changes of their income.

The taxpayers, Milton E. and Muriel Goldson, filed a copy of changes of Federal income on May 13, 1964 following a request of the Income Tax Bureau that they file such a notice of such change. These changes resulted from a Federal audit of their 1957 tax returns. An assessment was issued on June 24, 1964 based on the Federal changes of taxable income (Assessment No. AMT 344977) which assessed normal tax and capital gains tax due in the amount of \$614.02.

The taxpayers claim that the assessments were not made within the time period prescribed by Section 373 of the Tax Law. They contend that they could not be issued subsequent to three years from the time their New York income tax returns were required to be filed. They contended that Section 373, subdivision (4) of the Tax Law does not allow an assessment of additional tax to be made based on a Federal change in income after the expiration of the three-year period.

In the matter of *Louis and Sam Fargnoli*, the issue involved herein was considered by the State Tax Commission. Its position that the assessments could be issued beyond the three-year statutory period was recently upheld by the Supreme Court. *20 N.Y.2d 270.27* provides for the issuance of an assessment within one year of the receipt of notification of Federal changes notwithstanding the limitation of the time within which an assessment may otherwise be made.

The case of *Walden v. State Tax Commission*, 17 A D 2d 47, cited by the taxpayers in support of their position, dealt with claims for refund as a result of war-loss deductions for the year 1941. It involved the construction of a statute which extended the time limitation to file an application with regard to war losses for the calendar year 1941 and is not applicable to the issue involved here.

For the reasons stated above, I recommend that the determination of the State Tax Commission denying the taxpayers' applications in the above matters be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

~~HEARING OFFICER~~

FVD:ac
Encs.

September 15, 1967

9-15-67

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATION :
OF :
MILTON H. AND MERIEL GOLDSON :
FOR REVISION OR REFUND OF PERSONAL :
INCOME TAXES UNDER ARTICLE 16 OF :
THE TAX LAW FOR THE YEAR 1957 :

The taxpayers having filed an application for revision or refund of personal income tax under Article 16 of the Tax Law for the year 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission, 89 Centre Street, New York, New York on June 21, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That a Federal audit was made of the taxpayers' 1957 Federal income tax return; that as a result of the Federal audit the taxpayers' reported taxable income as adjusted resulted in an increase in the taxpayers' income and capital gains for the year 1957; that the taxpayers' normal income was increased by the amount of \$4,100.30 and that their capital gains were increased by the amount of \$9,342.74.

(2) That on May 13, 1966, the taxpayers filed a copy of changes in Federal income with the Department of Taxation and Finance as a result of the Federal audit of their 1957 income tax return.

(3) That an assessment was issued for 1957 under date of June 24, 1964 (Assessment No. ANNY 344977) assessing normal

tax and capital gains tax due in the amount of \$614.02 in conformity with changes made in their taxable income on the audit of the taxpayers' Federal income tax return within one year of the receipt of notification by the taxpayer of the Federal change.

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

DETERMINES:

That the assessment issued for the year 1957 (Assessment No. ABIF 344977) was timely issued in accordance with Section 373, subdivision (4) of the Tax Law and SO ORDER \$70.21, since it was issued within one year of the notification by the taxpayer of the Federal change; that, accordingly, the assessment is correct and does not include any tax or other charges which could not have been lawfully demanded and that the taxpayers' application for revision or refund in respect thereto be and the same is hereby denied.

DATED: Albany, New York on this 27th day of September , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~COMMISSIONER~~

/s/

JAMES R. MACDUFF

~~COMMISSIONER~~

/s/

WALTER MACLYN CONLON

~~COMMISSIONER~~