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MEMORANDUM

Income Tax Determination
A-2
Green, Willie

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petitions of
WILLIE GREEN
For a Redetermination of a Deficiency
or For Refund of Personal Income Taxes
Under Article 22 of the Tax Law for the
Years 1961 and 1962

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on June 23, 1967. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are whether the taxpayer filed a timely petition for redetermination for the year 1961 and whether exemptions claimed by the taxpayer were properly disallowed.

The taxpayer filed income tax returns for the years 1961 and 1962 in which he claimed seven exemptions. The exemptions claimed were as follows: (1) taxpayer; (2) taxpayer's wife; (3) taxpayer's mother; (4) and (5) two children of the taxpayer living with the taxpayer's mother; (6) and (7) two children of the taxpayer living with the taxpayer's wife.

The Notice of Deficiency and Statement of Audit Changes were issued for the year 1961 under date of March 15, 1963 (File No. 1-1787242) determining additional personal income tax and interest due in the amount of \$185.06 on the basis that information on file did not establish the allowance of six of the exemptions and the statutory credit claimed on the taxpayer's return.

A Notice of Deficiency and Statement of Audit Changes were issued for the year 1962 under date of October 5, 1964 (File No. 2-6778496) determining additional personal income tax and interest due in the amount of \$142.58 on the basis that information on file indicates that six exemptions claimed on the taxpayer's return are not allowable deductions.

The taxpayer filed a petition for redetermination of a deficiency issued for the year 1961 on June 24, 1965, more than 90 days after the issuance of the Notice of Deficiency.

The taxpayer and his wife are separated. She lives in Lansing, Michigan with two of the taxpayer's children. The

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

WILLIE GREEN

**FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962**

The taxpayer having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on June 23, 1967 before Francis V. Bow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) The taxpayer filed a separate income tax resident return for the year 1962 in which he reported income of \$10,969.01 and claimed itemized deductions of \$722.50; that the taxpayer claimed, in addition to an exemption for himself, six other exemptions.

(2) That a Notice of Deficiency and Statement of Audit Changes for the year 1962 were issued on October 5, 1964 (File No. 2-6779496) determining additional personal income tax and interest due in the amount of \$142.58 on the basis that the information on file indicates that six exemptions claimed on the taxpayer's return are not allowable deductions.

(3) That the six exemptions claimed by the taxpayer were for the following persons: (1) the taxpayer's mother, Carrie Green, who lives in Rocky Mount, North Carolina; (2) the taxpayer's son and daughter, Joseph Green and Mary Green, who are eight and nine years

of age respectively, who resided with the taxpayer's mother in Rocky Mount, North Carolina; (3) the taxpayer's wife, Corrine Green, from whom the taxpayer is separated and who resides in Lansing, Michigan; and (4) the taxpayer's sons, Daniel Green and Ray Green, who were approximately 15 and 17 years of age respectively, during the year involved herein and who resided with the taxpayer's wife in Lansing, Michigan.

(4) That the taxpayer contributed approximately \$39.00 a week for the support of his wife and the two children residing with her; that the taxpayer was unable to submit evidence to establish that he contributed over half of the support of his wife and two children or if his wife had any gross income during the year 1962; that the taxpayer's wife did not sign the taxpayer's income tax return.

(5) That the taxpayer contributed approximately \$30.00 a week for the support of his mother, Carrie Green, and his two children, Joseph Green and Mary Green, who resided with his mother; that the taxpayer was the sole support of his mother and his two children living with her.

(6) That the taxpayer's Federal income tax return on which the taxpayer claimed the same exemptions which he claimed on his New York return was accepted as filed.

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

DECIDES:

(A) That the taxpayer is not allowed to claim a deduction for an exemption for his wife since he filed a separate tax return and did not submit any evidence that she had no gross income during the year 1962.

(B) That the taxpayer is not entitled to claim a deduction

taxpayer's wife did not sign his income tax returns for 1961 and 1962. The taxpayer was unable to state if his wife had a separate income during the years in question. The two children living with the taxpayer's wife were 15 and 17 years of age in 1962. The taxpayer paid approximately \$35.00 a week during 1961 and 1962 for the support of his wife and the two children living with her through the New York Family Court. The taxpayer did not show that over half of the support of his wife and two children was received from him.

The taxpayer sent approximately \$30.00 a week to his mother and two children who lived in Rocky Mount, North Carolina. The taxpayer's mother is now 84 years old, owns no property and has no other means of support other than the money received by her from the taxpayer. The two children who lived with her are now aged eight and nine. The taxpayer was the sole support of these children and his mother during the years involved.

It is my opinion that the taxpayer is entitled, in addition to his personal exemption, to three exemptions, one for his mother and two for his two children who live with her since he was their sole support. The taxpayer is not entitled to any exemptions for his wife and the two children who live with her in Michigan. A taxpayer is entitled to a deduction for exemptions for New York income taxes to which he is entitled for Federal income tax purposes. If a separate return is filed by the taxpayer he can claim an exemption for his spouse if she has no gross income. An exemption is allowed for each dependent of a taxpayer over half of whom support was received from the taxpayer. (Sections 151 and 152 of the Internal Revenue Code, Section 616 of the Tax Law.)

Since the taxpayer failed to file a timely petition for the year 1961, a redetermination of the deficiency can only be made for the year 1962 for which year he had filed a timely petition. However, upon the payment of the tax determined for 1961, the taxpayer can file a claim for credit or refund of any overpayment of tax within two years under the provisions of Section 687(a) of the Tax Law. If his claim is denied, he can file a petition for a hearing on the merits of his claim that he is entitled to the exemptions disallowed.

For the reasons stated above, I recommend that the determination of the State Tax Commission dismissing the petition of the taxpayer for the year 1961 and partially cancelling the deficiency for 1962 in the amount of \$138.13 be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:ac
Encs.

September 21, 1967

9/22/67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

WILLIE GREEN

**FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962**

The taxpayer having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on June 23, 1967 before Francis V. Bow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) The taxpayer filed a separate income tax resident return for the year 1962 in which he reported income of \$10,969.81 and claimed itemized deductions of \$722.50; that the taxpayer claimed, in addition to an exemption for himself, six other exemptions.

(2) That a Notice of Deficiency and Statement of Audit Changes for the year 1962 were issued on October 3, 1962 (File No. 2-6779495) determining additional personal income tax and interest due in the amount of \$142.58 on the basis that the information on file indicates that six exemptions claimed on the taxpayer's return are not allowable deductions.

(3) That the six exemptions claimed by the taxpayer were for the following persons: (1) the taxpayer's mother, Carrie Green, who lives in Rocky Mount, North Carolina; (2) the taxpayer's son and daughter, Joseph Green and Mary Green, who are eight and nine years

of age respectively, who resided with the taxpayer's mother in Rocky Mount, North Carolina; (3) the taxpayer's wife, Corrine Green, from whom the taxpayer is separated and who resides in Lansing, Michigan; and (4) the taxpayer's sons, Daniel Green and Ray Green, who were approximately 15 and 17 years of age respectively, during the year involved herein and who resided with the taxpayer's wife in Lansing, Michigan.

(4) That the taxpayer contributed approximately \$33.00 a week for the support of his wife and the two children residing with her; that the taxpayer was unable to submit evidence to establish that he contributed over half of the support of his wife and two children or if his wife had any gross income during the year 1962; that the taxpayer's wife did not sign the taxpayer's income tax return.

(5) That the taxpayer contributed approximately \$30.00 a week for the support of his mother, Carrie Green, and his two children, Joseph Green and Mary Green, who resided with his mother; that the taxpayer was the sole support of his mother and his two children living with her.

(6) That the taxpayer's Federal income tax return on which the taxpayer claimed the same exemptions which he claimed on his New York return was accepted as filed.

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

HOLDINGS:

(A) That the taxpayer is not allowed to claim a deduction for an exemption for his wife since he filed a separate tax return and did not submit any evidence that she had no gross income during the year 1962.

(B) That the taxpayer is not entitled to claim a deduction

for exemptions for his two children, Daniel and Roy Green, since he failed to submit documentary or other satisfactory evidence that over half of the support of the two children was received from him.

(C) That the taxpayer is allowed a deduction for an exemption for his mother since she had no income for the taxable year and over half of her support was received from the taxpayer.

(D) That the taxpayer is allowed to claim a deduction for exemptions for his two children, Joseph and Mary Green, since they had not attained the age of 19 and over half of their support was received from the taxpayer.

(E) That accordingly, the taxpayer's 1962 tax is recomputed as follows:

New York Income	\$10,969.61
New York Itemized Deductions	722.80
Balance	\$10,246.81
Exemption	2,400.00
New York Taxable Income	\$7,846.81
Tax on Income	\$310.79
Statutory Credit	12.20
New York tax	\$298.59
New York tax previously stated	199.81
Balance	\$498.48
Interest from 4/15/63 to 4/20/64	5.99
Total	\$504.47
Payment remitted on 4/20/64	100.00
Additional Personal Income	
Tax and Interest Due Computed	\$ 4.45

(F) That by virtue of (E) above, the Notice of Deficiency (File No. 2-6779496) for the year 1962 is hereby modified by cancelling the amount of \$138.13 therefrom; that the balance of the Notice of Deficiency for the year 1962 in the modified amount of \$4.45 is affirmed and that such amount as modified is correct and lawfully

due and owing together with other statutory charges and does not include any tax or other charges which are not lawfully due and owing.

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

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

/s/ WALTER MACLYN CONLON
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

WILLIE GREEN

**FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1961**

The taxpayer having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on June 23, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, 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 filed a personal resident tax return for the year 1961 in which he claimed seven exemptions.
- (2) That on March 15, 1965 a Notice of Deficiency and Statement of Audit Changes were issued (File No. 1-1767342) for the year 1961 determining that additional personal income tax was due in the amount of \$157.50 on the basis that the information on file does not establish the allowance of six exemptions and the statutory credit claimed on the taxpayer's return.
- (3) That the taxpayer filed a petition for redetermination of a deficiency on June 24, 1965, more than 90 days after the mailing of the Notice of Deficiency on March 15, 1965 as required under the provisions of Section 689 of the Tax Law.

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

DECIDES:

(A) That the taxpayer failed to file a timely petition for redetermination of a deficiency within 90 days from the date of the mailing of the Notice of Deficiency in accordance with the provisions of Section 689 of the Tax Law; that accordingly, the taxpayer's petition for redetermination of a deficiency for the year 1961 (File No. 1-1787242) be and the same is hereby dismissed.

(B) That the taxpayer upon payment of the tax determined with interest and other statutory charges for the year 1961 can file a claim for credit or refund for overpayment of income tax within two years from the time the tax is paid as provided by Section 607(a) of the Tax Law.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER