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MEMORANDUM

Income Tax Determination
Malina, Joseph
A-2

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Application of
JOSEPH MALINA For Revision or Refund
of Personal Income Taxes Under Article
16 of the Tax Law For the Year 1955

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on January 12, 1967. The appearances and the evidence produced were as shown in the stenographic minutes submitted herewith.

The taxpayer filed a resident income tax return for 1955 in which he reported net income of \$4,451.04. An assessment was issued for that year on November 2, 1961 (Assessment No. B987741) assessing additional income tax, penalty and interest in the amount of \$520.91 on the basis that as a result of a Federal audit of the taxpayer's return, it was disclosed that he had additional income of \$8,099 and that as a result of the additional income a medical deduction in the amount of \$257.57 was disallowed. The adjustment of the taxpayer's income was based on the taxpayer having unexplained cash in his possession and such cash was deemed income for 1955.

The taxpayer was a former police captain employed by the City of New York. He retired in 1955. The taxpayer stated that the cash in his possession represented part of his savings accumulated during the prior 32 years. He further claimed that he did not deposit this money in a bank account but accumulated the money at home because as a police officer he was subject to actions for assault and the like arising out of his duties as a police officer and did not want his savings available to satisfy any judgment that might be obtained against him. He also indicated that he was afraid of banks because in 1933 he had \$1,500 on deposit which he was unable to withdraw when his account was frozen.

The taxpayer on the Federal audit of his return consented to the adjustment of his income for 1955. However, at the hearing he claimed that his consent to the adjustment was the result of duress. The adjustment on the Federal audit of the taxpayer's income was computed by computing his net worth at the beginning of 1955 and at the end of that year. Prior to his retirement, the taxpayer had known assets which consisted of some stocks, a bank account, a house

which had no mortgage, an automobile, furniture and other personal possessions. He stated that his bank account fluctuated between \$500 and \$4,000. The taxpayer claimed that he had about \$20,000 in cash in his possession at home during 1965.

Although it appears that the taxpayer could have saved the \$20,000 which he kept in his possession, the taxpayer's explanation for having this money in cash is inadequate in the light of his other assets.

The taxpayer claimed medical expenses of \$257.57. Medical expenses in excess of 5% of taxpayer's net income are deductible. (Tax Law, Section 360, subdivision 15) The increase of the taxpayer's net income by the unexplained cash of \$8,099 results in a total disallowance of his medical deduction.

For the reasons stated above, I recommend that the determination of the State Tax Commission denying the taxpayer's application be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:pg

Enc.

October 12, 1967

10-27-67

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
JOSEPH MALINA
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1955

The taxpayer having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1955, and a hearing having been held in connection therewith at the office of the State Tax Commission, 88 Centre Street, New York, New York on January 12, 1957 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 resident income tax return for the year 1955 in which he reported net income of \$4,451.04; that the taxpayer claimed a medical deduction on his return of \$257.57; that the taxpayer was a police officer employed by the City of New York; that in August 1955 he retired with the rank of police captain.

(2) That an assessment for the year 1955 was issued on November 7, 1961 (Assessment No. 8987741) which assessed additional income tax, penalty and interest due in the sum of \$520.91 as a result of a Federal audit of the taxpayer's return, which found that the taxpayer had additional taxable income in the amount of \$8,099, and as a result of the adjustment in income the medical deduction in the amount of \$257.57 is disallowed.

(3) That on December 31, 1954 the taxpayer had assets which consisted of some stocks, an automobile, a bank account, a home which was not mortgaged, furniture and other personal possessions; that during 1954 the taxpayer's bank account fluctuated between \$500 and \$4,000.

(4) That during 1955 the taxpayer had \$20,000 in cash in his possession which he kept in his home; that the taxpayer claimed to have saved the \$20,000 during the prior 32 years; that despite the fact that he maintained a bank account and had other known assets the taxpayer's only explanation for keeping this amount of cash in his home was that in 1933 he was unable to withdraw \$1,500 when his bank account became frozen and that as a police officer he was subject to litigation by reason of work performed in the course of his police duties such as actions for assaults and wanted to protect his savings from any judgments that might be obtained against him; that during 1955 he purchased stock with funds which he had on deposit in a bank account in the amount of \$2,617 and \$8,000 which he had in cash in his home.

(5) That the taxpayer consented to the adjustment of his income for 1955 on the Federal audit of his return; that the Federal adjustment was based on unexplained cash in the taxpayer's possession in the amount of \$8,099 which was deemed to be income of the taxpayer for the year 1955; that the taxpayer contended that he consented to the adjustment of his income on the Federal audit after being subjected to browbeating, bulldozing and intimidation for six months and did not wish to be subjected to further mental bludgeoning.

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

DETERMINES:

(A) That the taxpayer failed to disclose or report the amount of \$8,099 income earned by him during the year 1955.

(B) That the deduction of \$257.57 claimed by the taxpayer was properly disallowed since the increase of net income of the taxpayer did not permit the deduction of the medical expenses claimed by him under the provisions of Section 360, subdivision 15 of the Tax Law.

(C) That accordingly the assessment of additional income tax, penalty and interest for the year 1955 (Assessment No. 8987741) is correct and does not contain any taxes or other charges which are not lawfully due and owing.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER