

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*H-2*  
*Merson, Charlotte*

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Applications of  
CHARLOTTE MERSON  
For Revision or Refund of Personal  
Income Taxes Under Article 16 of the  
Tax Law for the Years 1956 and 1957

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on January 10, 1967. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The primary issue involved herein is the timeliness of the taxpayer's application for revision or refund of additional income taxes assessed against her.

Assessment No. B 735028 under date of February 8, 1960 was issued for the year 1956 assessing additional income tax due in the amount of \$86.50 on the basis that the taxpayer failed to furnish information to establish her claim for family exemption and dependency credit. As a result her medical deduction was limited to \$1,250.00 instead of the amount claimed of \$1,977.57. Assessment No. B 813010 under date of September 29, 1960 was issued for the year 1957 assessing additional tax due in the amount of \$116.72 on the basis that the taxpayer failed to furnish information to establish her deduction claimed for family exemption and that deductions claimed for excludable sick pay and robbery loss of \$3,000.00 were disallowed as unsubstantiated.

The taxpayer sent a letter which was received by the Department on November 9, 1960 in which she disputed the disallowance of her deductions and submitted evidence to support her claim for head of family and dependency credit. In response to the taxpayer's letter the Income Tax Bureau sent a letter requesting further information with regard to her head of family exemption, sick pay deduction and robbery loss. The taxpayer was also advised that her letter of protest did not constitute a formal request for a hearing. The prescribed application form for revision was not sent to her.

The taxpayer sent some of the information requested with regard to her sick pay, head of family exemption and robbery loss.

On February 27, 1961 the taxpayer filed an application for revision of the assessment issued for 1956 which was denied on May 31, 1961 as not timely filed. On August 17, 1961 the taxpayer filed a demand for a hearing on her application for 1956 and 1957.

It is my opinion that the taxpayer's letter filed on November 9, 1960 constituted an application for revision of the assessments issued for the years 1956 and 1957. While the taxpayer's letter did not conform with the form prescribed by the State Tax Commission, the Income Tax Bureau's letter in response to it did not enclose copies of the prescribed form for the taxpayer's use as required by Article 572 of the Manual of Policy. The taxpayer's letter apprised the State Tax Commission that she protested the assessments.

During 1956 the taxpayer was the sole support of her father who lived with her until his death on July 1, 1956. The taxpayer was also the sole support of her son who was a full time student during 1956 and 1957. A Federal audit of the taxpayer's 1957 return was made in which her sick pay of \$900.00 was verified and allowed, \$250.00 in claimed medical expenses for 1957 were disallowed and \$1,000.00 claimed for other deductions was also disallowed. The taxpayer had claimed \$3,000.00 for robbery loss. Accordingly, it appears that the taxpayer was allowed a \$2,000.00 robbery loss deduction.

Chapter 1048 of the Laws of 1957 applicable to returns for any taxable year commencing on or after January 1, 1957 amended the Tax Law to bring it in line with the Federal Code limiting exemptions of disability and sickness benefits from gross income subject to the personal income tax. The allowance of the head of family exemption, the deductions of \$900.00 sick pay and \$2,000.00 robbery loss for 1957 results in a complete cancellation of the additional tax assessed for 1957. The same result follows even if \$250.00 is disallowed for claimed medical expenses for that year.

The allowance of a head of family exemption and dependency credit claimed for the taxpayer for 1956 requires the allowance of the medical expense deduction claimed by the taxpayer for that year (Section 360, subd. 15).

-3-

For the reasons stated above, I recommend that the determination of the State Tax Commission granting the taxpayer's application for the years 1956 and 1957 be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

---

Hearing Officer

FVD:nn

Enc.

September 20, 1967

9-22-67

STATE OF NEW YORK

STATE TAX COMMISSION

-----  
IN THE MATTER OF THE APPLICATIONS

OF

CHARLOTTE MERSON

FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEARS 1956 AND 1957  
-----

Charlotte Merson, the taxpayer, herein having filed a demand for a hearing on her claims for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1956 and 1957 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 the tenth day of January 1967 before Francis V. Low, 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 tax return for the year 1956 in which she claimed a head of family exemption and a dependency credit and claimed a deduction for medical expenses in the amount of \$1,977.57; that the taxpayer filed a resident income tax return for the year 1957 in which she claimed a head of family exemption and a deduction for loss by theft in the amount of \$3,000.00; that the taxpayer also claimed that she received sick pay in the amount of \$900.00 which was excludable from her taxable income.

(2) That an assessment for the year 1956 (Assessment No. S 735028) was issued on February 8, 1960 assessing normal tax penalty and interest due in the amount of \$86.50 on the basis that the taxpayer failed to substantiate her claim for the head of family exemption and dependency credit and as a result the taxpayer's maximum medical deduction is limited to \$1,250.00.

(3) That an assessment was issued for 1957 (Assessment No. S 813010) on September 29, 1960 assessing normal tax due in the amount of \$116.72 on the basis that the taxpayer failed to substantiate the head of household exemption and deductions claimed for excludable sick pay and robbery loss.

(4) That on November 9, 1960, the taxpayer filed with the Department of Taxation and Finance a letter protesting the assessments and alleging that her claims for family exemption, dependency credit, theft losses and sick pay are valid; that in response to the taxpayer's letter a letter was sent to her which advised her that an adjustment cannot be made on the assessment (Assessment No. S 813010) until she submitted information with regard to her sick pay and head of family deduction and an itemised statement of her robbery loss of \$3,000.00; that the letter advised taxpayer that her letter of protest did not constitute a formal request for revision which must be made on the form prescribed; that no copy of the prescribed form of application was sent to the taxpayer; that on February 27, 1961 the taxpayer filed an application for revision of the assessment issued for 1956; that on May 21, 1961 the taxpayer's application was denied on the basis that her application for the year 1956 was not timely filed; that on August 17, 1961 the taxpayer filed a demand for a hearing on

her applications for revision for the years 1956 and 1957.

(5) That during 1956 the taxpayer was the sole support of her father until his death on July 1, 1956; that during 1956 and 1957 the taxpayer was the chief support of a home where she resided with her son during the time that he was not a full time student; that the taxpayer was the sole support of her son.

(6) That the taxpayer's 1957 Federal tax return was audited; that on the Federal audit the taxpayer verified and was allowed her sick pay exclusion of \$900.00; that the taxpayer was allowed an exemption for her son; that the taxpayer was disallowed \$250.00 for medical expenses; that other deductions in the amount of \$1,000.00 were disallowed as unsubstantiated.

(7) That in 1957 property of the taxpayer having the value of \$2,000.00 was stolen from her; that the taxpayer received \$900.00 for sick pay which was excludable from income received from her employer.

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

**DETERMINES:**

(A) That the letter of the taxpayer filed with the Department of Taxation and Finance on the 9th day of November 1960 constituted a timely application for revision or refund of the assessments issued for the years 1956 and 1957 since it was filed within one year of the issuance of such assessments and apprised the State Tax Commission that she protested the assessments within the intent and meaning of Section 374 of the Tax Law and the prescribed form of application was not sent to the taxpayer upon the filing of such letter.

(B) That the taxpayer is allowed a head of family exemption and dependency credit for the year 1956 since she sustained that she was the chief support of a home in which she resided with her father and her son over whom she exercised family control.

(C) That the taxpayer's medical deductions for the year 1956 are allowed since the taxpayer who is the head of a family is permitted to deduct medical expenses which do not exceed \$2,500.00 under the provisions of subdivision 15 of Section 301 of the Tax Law.

(D) That the taxpayer is allowed a head of family exemption for the year 1957 since she sustained that she was the chief support of a home in which she resided with her son over whom she exercised family control.

(E) That the taxpayer is allowed a deduction for excludable sick pay in the amount of \$900.00 for the year 1957 since she received a payment of \$900.00 as an employee for a period during which she was absent from work on account of personal injuries or sickness as provided by subdivision 2 paragraph (a) of Section 359 of the Tax Law.

(F) That the taxpayer is allowed a deduction for a robbery loss in the amount of \$2,000.00, the value of the property stolen from her during the year 1957.

(G) That accordingly, the assessments for the year 1956 (Assessment No. B 735028) and the year 1957 (Assessment No. B 813010) for personal income taxes, penalty and interest were not proper and should be cancelled and the same are cancelled in full.



-3-

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