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BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy,
Macduff and Conlon

FROM: E. H. Best, Counsel

SUBJECT: JOSEPH MARTUSCELLO
Offer in Compromise
SIB Assessments ABSIB 13667
through ABSIB 13681
1944-1949 1951-1959

Transmitted herewith is the Legal Enforcement Unit file which is submitted for review in connection with an offer in compromise made by Mr. Martuscello. An offer of \$9,326.52 is being made in full satisfaction of Special Investigations Bureau assessments of tax, penalty and interest in the amount of \$86,923.53. The assessments were based on Federal audit for the years 1944 through 1960 with no changes noted for the years 1950 and 1960. As a result of the Federal audit, tax claims were asserted by the Internal Revenue Service in the amount of \$211,882.42.

On October 31, 1965 the Internal Revenue Service filed a notice of lien and levied on all of the real and personal assets of the taxpayer, closed his store and took possession of all income from accounts and from rental property received thereafter. On March 25, 1966, the taxpayer executed an agreement whereby, in exchange for the right to reopen and operate his store and to manage his own business, he agreed to pay the Internal Revenue Service the sum of \$35,000.00 in cash and thereafter to pay the sum of \$700.00 a month toward liquidating his indebtedness. This monthly payment would obviously be insufficient to pay the interest on the assessment at the rate of 6%.

The notice of the Federal tax lien was filed in October, 1965 by the Internal Revenue Service and has priority over the assessments issued by the Special Investigations Bureau on September 20, 1966. There appears to be no possibility that the taxpayer will ever be able to accumulate any property which would not be covered by the Federal lien and thus available for application to the New York tax claim. From income tax returns submitted by the taxpayer, it appears that he will have difficulty earning an amount sufficient to make the monthly payment to the Internal Revenue Service. If he defaults, there is the

probability that the Federal authorities will foreclose their lien and thereby close down the taxpayer's business completely.

The \$9,326.52 which has been offered is the basic tax for the years 1944 through 1949 based on the Special Investigations Bureau's assessment. Prior to the time the assessments were issued by the Internal Revenue Service Albany Audit AA 4755 was made of the taxpayer's affairs for the period 1953 through 1959 and the sum of \$3,221.22 was assessed and paid to the State Tax Commission as a result of that audit on February 17, 1960. For that reason, the taxpayer does not believe that a new assessment should be made for those years. It is apparent that the taxpayer does not take into consideration the fact that the assessments were based on fraud and not mere failure to report.

It appears that the taxpayer is insolvent and, in view of the prior Federal lien and the amount of that lien, it further appears the \$9,326.52 is more than could be collected by other legal means. It is the opinion of this office that the best interests of the State of New York would be served by acceptance of the offer despite the fact that the assessments were based on fraud. If you concur, would you please execute three copies of the proposed order and return to this office for further processing.

E. H. Bass

Counsel

JGR:rlp
Enc.
June 22, 1967

BUREAU OF LAW
MEMORANDUM

TO: Deputy Commissioner Igoe
FROM: E. H. Best, Counsel
SUBJECT: JOSEPH MARTUSCELLO
Offer in Compromise
SIB Assessments ABSIB 13667
through ABSIB 13681
1944-49 1951-59

STATE INCOME TAX BUREAU
JUN - 3 1967
DIRECTOR OF THE BUREAU

Transmitted herewith is the Legal Enforcement Unit file in the above matter, an offer in compromise in the amount of \$9,326.52, a check in that amount and the income tax file of the taxpayer. This office recommends that the offer be accepted for the reasons set forth in the enclosed memorandum to the State Tax Commission. The Special Investigations Bureau has indicated its approval of acceptance of the offer.

Would you please note your views and forward all papers to the State Tax Commission for its consideration.

*I agree
that the
offer in
Compromise of \$9326.52*
E. H. Best

E. H. Best
Counsel

JGR:rlp
Enc.
June 22, 1967

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
Joseph Martuscello

A verified petition having been duly presented by JOSEPH MARTUSCELLO residing at 18 Coelidge Road, Amsterdam, New York pursuant to section 171 subdivision 15 of the Tax Law praying for a compromise of his tax liability for personal income taxes and unincorporated business taxes arising from assessments issued against the said JOSEPH MARTUSCELLO under Article 16 and Article 16-A of the Tax Law for taxes due for the years 1944-1949 and 1951-1959; and

IT APPEARING from the proof submitted that the said JOSEPH MARTUSCELLO is indebted to the New York State Tax Commission in the sum of \$16,977.12 for personal income taxes and unincorporated business taxes for the years 1944 through 1949 and the years 1951 through 1959 plus assessed penalty and interest in the amount of \$69,946.41 and that the total amount due under the said assessments is \$86,923.53, and;

IT FURTHER APPEARING that the said JOSEPH MARTUSCELLO is insolvent and that the sum of \$9,326.52 offered in compromise is not less than could be recovered through legal proceedings;

IT IS HEREBY ORDERED that pursuant to the authority conferred in and by section 171 subdivision 15 of the Tax Law the said tax liability and indebtedness of the said JOSEPH MARTUSCELLO resulting from the aforementioned assessments in the amount of \$86,923.53 be and the same is hereby

compromised for the sum of \$9,326.52; and

IT IS FURTHER ORDERED that the aforementioned \$9,326.52 shall be paid to the State Tax Commission within twenty days after receipt of a notice of this Order and that upon said payment the said JOSEPH MARTUSCELLO, the petitioner herein, shall thereby be discharged and released by the State Tax Commission from liability for unpaid personal income taxes and unincorporated business taxes due under Articles 16 and 16-A for the years 1944 through 1949 and the years 1951 through 1959 and from all interest and penalties thereon.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner

DATED: July 12, 1967

APPROVED this day of June 1967
as required by Tax Law, Section 171,
subdivision 15.

Justice of the Supreme Court