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*Income tax Determinations*

BUREAU OF LAW

A-2

MEMORANDUM *Rosenblum, Samuel*

TO: **Commissioners Murphy, Macduff and Conlon**

FROM: **Francis V. Dow, Hearing Officer**

SUBJECT: **In the matter of the application of Samuel Rosenblum for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959**

A hearing with reference to the above matter was scheduled before me for November 15, 1966 at 80 Centre Street, New York, New York. The taxpayer defaulted in appearance. A letter was subsequently sent to the taxpayer affording him an opportunity to have the hearing rescheduled. No response to that letter was received.

An assessment (Assessment No. B 832512) was issued disallowing the optional deduction of \$1,000 claimed by the taxpayer on the grounds that since the taxpayer listed specific business deductions he could not claim the optional deduction. The assessment also disallowed a deduction of \$4,608.92 which represented a 1957 net operating loss on the ground that there is no provision in the Tax Law for a deduction of that nature. I am of the opinion that the Income Tax Bureau properly disallowed these deductions. In fact, the taxpayer did not object to these disallowances.

As an offset to the assessment the taxpayer claimed that an error was made in his tax return as a result of which the income he reported was higher than the correct amount of his income. He alleged that this was caused by the listing of certain property owned by Nilson Realty, Inc., as being owned by the taxpayer. The franchise tax return of Nilson Realty, Inc. for the year 1959 has been destroyed. The taxpayer failed to substantiate his claim. However, on the Federal audit of the taxpayer's 1959 Federal return, the taxpayer substantiated business expenses totalling \$3,603.10 which he neglected to list in his New York return.

It is my opinion that the additional business expenses which the taxpayer substantiated on the Federal audit of his return should be allowed as a deduction for New York State income tax purposes. Section 360 of the Tax Law provides that

all ordinary and necessary expenses paid or incurred to carry on a business are deductible in computing net income. The allowance of these additional expenses results in the lowering of the taxpayer's liability in the sum of \$360.31.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

January 18, 1967

FVD:kon

Enc.

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**

**OF**

**SAMUEL ROSENBLUM**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEAR 1959**

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Samuel Rosenblum, the taxpayer herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959 and a hearing having been scheduled in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York for the 15th day of November, 1966 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having defaulted in appearance at the scheduled hearing and a letter having subsequently been sent to the taxpayer on November 23, 1966 affording the taxpayer an opportunity to request a rescheduled hearing, and the taxpayer having failed to respond to such letter and the matter having been reviewed and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State resident tax return for the year 1959; that an assessment (Assessment No. B 832512) in the amount of \$1,311.46 was issued disallowing the optional deduction of \$1,000 claimed on the grounds that the taxpayer claimed specific business deductions and cannot

claim both deductions, and also disallowing a deduction of \$4,608.92 which represented a net operating loss carryover on the ground that there is no provision in the Tax Law for the allowance of a deduction of that nature.

(2) That the taxpayer had business expenses amounting to \$3,603.10, in addition to the business expenses which he listed in his tax return.

(3) That the taxpayer failed to submit any evidence to substantiate his claim, as an offset of the said assessment, that he reported more income in his return than the correct amount because certain property owned by Hilson Realty, Inc. was listed as being owned by the taxpayer; that no other evidence was produced to show that the taxpayer's income was incorrectly reported in his 1959 tax return.

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

**DETERMINES:**

(A) That the \$1,000 optional deduction claimed by the taxpayer is disallowed since the taxpayer claimed specific deductions and cannot claim both under section 360(18) of the Tax Law; that the deduction of \$4,608.92 claimed by the taxpayer for net operating loss is disallowed since there is no provision in the Tax Law for a deduction of that nature.

(B) That the taxpayer failed to submit any evidence to substantiate his claim that he reported more income in his tax return than the correct amount required to be reported.

(C) That the taxpayer is allowed further deductions for business expenses which he failed to report in his income tax return amounting to \$3,603.10 since all ordinary and necessary

expenses incurred in carrying on a business are deductible in computing net income.

(D) That by virtue of "(C)" above, the assessment for additional taxes (Assessment No. B 832512) for the year 1959 is hereby modified by cancelling the amount of \$360.31 therefrom; that the balance of the assessment for the year 1959 in the modified amount of \$971.51 is affirmed and that such amount is correct and lawfully due and owing, together with interest and other charges, and does not include any other taxes or charges which are not lawfully due and owing.

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

**STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**PRESIDENT**

/s/ JAMES R. MACDUFF  
**COMMISSIONER**

/s/ WALTER MACLYN CONLON  
**COMMISSIONER**