

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

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

1967
Income Tax Determinations
A-Z

MEMORANDUM

Somers, Theresa J.

TO: Commissioners Murphy, Macduff and Conlon
FROM: Francis V. Dow, Hearing Officer
SUBJECT: THERESA J. SOMERS

Matter of the Application for
Revision or Refund of Personal
Income Taxes under Article 16
of the Tax Law for the Year 1959
and under Article 22 of the Tax
Law for the Year 1960

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on January 11, 1967. The appearances and the exhibits were as shown in the stenographic minutes submitted herewith.

The key issue involved herein is whether the tax return filed by the taxpayer on February 24, 1958 for the years 1952, 1953 and 1954 was a recomputation of tax by the Tax Commission which established the taxpayer's tax, penalty and interest liability for those years.

On November 2, 1955 the taxpayer filed tax return for the years 1951 through 1954. No tax was paid with the return. The return was mislaid by the Income Tax Bureau. The taxpayer's 1951 tax, penalty and interest liability was computed to be in the sum of \$26.19. The taxpayer's total tax, penalty and interest for the years 1952, 1953 and 1954 was computed to be in the sum of \$106.53. The taxpayer was not billed on this liability until after February 24, 1958. On February 24, 1958, within three years of November 2, 1955, the taxpayer filed a tax return for 1952 through 1956 in which her tax liability for those years was computed by an employee of the Tax Department to be in the sum of \$158.21. This amount includes total taxes, penalties and interest of \$62.74 for the years 1952, 1953 and 1954 which amount is less than the amount originally computed on November 2, 1955 for those years. The taxpayer also entered into an agreement on that date to pay her tax liability in installments which she fulfilled.

The taxpayer filed a return for 1957 in which she computed her tax to be \$87.25. She made a direct payment of \$5.00 towards this liability. She did not pay the balance of the tax due with her return for that year and additional penalty and interest for nonpayment of tax was computed in the amount of \$12.22. The taxpayer filed tax returns for the years 1959 and 1960, in which she claimed refund for overpayments of taxes

withheld in the sum of \$190.59. These returns were accepted as filed. A portion of the claimed refunds for the years 1959 and 1960 was applied to the taxpayer's 1957 liability and her liability for previous years.

It is my opinion that the taxpayer's return and agreement to pay her tax liability for the years 1952, 1953 and 1954, which she filed and entered into on February 24, 1958, constituted a recomputation and determination of tax, penalty and interest due by the Tax Commission within three years of the filing of her original return for those years, since they were prepared by an employee of the Tax Department after she had filed a return for those years and comes within the provisions of section 373 of the Tax Law which permit a recomputation of tax.

The taxpayer's tax, penalty and interest liability for the years 1951 through 1957 total \$263.87 and her direct payment and overpayments for taxes withheld for the years 1959 and 1960 totaled \$353.80.

For the reasons stated above I recommend that the determination granting the taxpayer's application for refund of income tax for the years 1959 and 1960 to the extent of \$69.93 be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

HEARING OFFICER

FVD:ac
Enc.

November 1, 1967

11-6-67

STATE TAX COMMISSION

STATE OF NEW YORK

IN THE MATTER OF THE APPLICATION

OF

THERESA J. SOMERS

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959 AND UNDER
ARTICLE 22 OF THE TAX LAW FOR THE
YEAR 1960

The taxpayer having filed an application for revision or refund of personal income taxes under Articles 16 and 22 of the Tax Law for the years 1959 and 1960 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 January 11, 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 on November 2, 1955 the taxpayer filed an income tax return for the years 1951, 1952, 1953 and 1954 which was prepared by an employee of the Department of Taxation and Finance and signed by the taxpayer in which the taxpayer's tax, penalty and interest liability for the said years was computed as follows:

	1951	1952	1953	1954
Net tax due	\$17.70	\$33.05	\$19.05	\$33.23
Penalty and interest	8.49	11.90	6.71	3.99
Total due	26.19	44.95	25.76	37.22

That although the said tax return was in the files of the Income Tax Bureau, it was mislaid, and no tax was paid on the taxpayer's liability for the said years until February 24, 1958.

(2) That on February 24, 1958 less than three years subsequent to the filing of the return for the years 1951 through 1954, the taxpayer filed a tax return for the years 1952, 1953, 1954, 1955 and 1956, which tax return was prepared by an employee of the Department of Taxation and Finance and in which return the taxpayer's liability for tax, penalty and interest was computed as follows:

	1952	1953	1954	1955	1956
Total tax due	\$ 7.20	\$11.56	\$27.45	\$33.41	\$45.20
Penalty and interest	3.17	4.45	8.90	8.59	9.27
Total amount due	10.37	16.01	36.35	41.00	54.47

That the said tax return was accepted on the date of the filing of the returns and an agreement was entered into with the taxpayer for payment of her liability in installments for tax, penalty and interest for the years 1952 through 1956, which as computed totaled \$158.21; that said amount was paid by the taxpayer in accordance with her agreement.

(3) That the taxpayer filed a tax return for the year 1957 in which she computed her tax liability to be in the sum of \$87.25.

(4) That on August 8, 1964 the taxpayer filed a tax return for the year 1959 in which she claimed a refund or credit for taxes withheld in the amount of \$137.35; that the taxpayer's refund claim for 1959 was allowed and applied to the taxpayer's liability for

1957 and previous years; that the interest charge for nonpayment of tax due for 1957 was in the amount of \$12.22 computed up to the date of the filing of the 1959 return; that the taxpayer filed an income tax return for the year 1960 in which she claimed a refund for overpayment of taxes in the amount of \$53.24 which was accepted as filed.

(5) That in addition to the payments made by the taxpayer in the amount of \$158.21 pursuant to agreement for the years 1952 through 1956, the taxpayer made an additional payment of \$5.00.

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

DETERMINES:

(A) That the income tax return filed by the taxpayer for the year 1951 on November 2, 1955 established the taxpayer's tax, penalty and interest liability for the year 1951 to be in the sum of \$26.19 since no further recomputation was or could be made by the Tax Commission.

(B) That the taxpayer's tax, penalty and interest liability for the years 1952, 1953 and 1954 is in the amounts of \$10.37, \$16.01 and \$36.36 respectively since her liability was recomputed to those amounts by the Tax Commission on February 24, 1958, within three years of the filing of her original return for these years on November 2, 1955.

(C) That the income tax return filed by the taxpayer for the years 1955 and 1956 on February 24, 1958 established the taxpayer's tax, penalty and interest liability for the years 1955 and 1956 to be in the amounts of \$41.00 and \$54.47 respectively since no further recomputation of liability was or could be made by the Tax Commission.

(D) That the income tax return filed by the taxpayer for the year 1957 was accepted as filed in which she computed her tax liability to be in the amount of \$87.25; that since the full amount of tax due for 1957 was not paid with her return, additional interest in the amount of \$12.22 was due and owing up to the date of the filing of her 1959 tax return on which she claimed a refund in excess of her 1957 tax liability.

(E) That the total tax, penalty and interest liability of the taxpayer for the years 1951 through 1957 is in the sum of \$283.67; that the total amount of direct payments made by the taxpayer to the Tax Commission is in the sum of \$163.21; that the total amount of overpayment of tax withheld on her 1959 and 1960 tax returns was in the amount of \$190.59; that after subtracting the total tax, penalty and interest liability for the years 1951 through 1957 from the sum of the direct payments made by the taxpayer and overpayments of tax as shown on her returns for 1959 and 1960, the taxpayer is entitled to a refund of tax in the amount of \$69.93; that no additional refund is due and owing to the taxpayer for the years 1951 through 1960, and accordingly the amount of \$69.93 is hereby directed to be refunded to the taxpayer.

Dated: Albany, New York this 27th day of November, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER