

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

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations
A-2
Sweeney, Joseph W.
and
Lillian

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: JOSEPH W. & LILLIAN SWEENEY
In the matter of the petition for
redetermination of a deficiency or
for refund of personal income taxes
under Article 22 of the Tax Law for
the year 1961

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on March 8, 1967. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the taxpayers made a \$2,000 payment on their tax liability.

Taxpayers filed their 1961 tax return in which they claimed payments and credits on their estimated tax of \$2,070.26. A notice of deficiency and statement of audit changes were issued on March 29, 1965 (File No. 1-6466922) finding additional tax and interest due in the amount of \$2,872.89 on the basis that they had tax credits for \$70.26 only.

The taxpayers claimed that they made a payment of \$2,000 to the New York State Income Tax Bureau on or about November 22, 1961 by mailing a check in that amount drawn on the Franklin National Bank together with their amended declaration of estimated tax. The taxpayers could not produce the cancelled check stating that it was not returned to them by the Internal Revenue Service which it had obtained on the Federal audit of their return. They argued that the deduction taken by them for the claimed payment was not disallowed on the Federal audit. The taxpayers further argued that the check must have been received by the Income Tax Bureau since they were given a refund of \$816.83 as claimed on their tax return. The records of the Franklin National Bank, however, show that the check for the \$2,000 never cleared the bank nor does the bank have any entries with regard to the check from the period commencing November 1961 to June 1962.

The taxpayers have offered to compromise this matter for \$500. It is my opinion that the taxpayers' offer should not be accepted.

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

April 27, 1967

Enc.

FVD:lb

/s/

FRANCIS V. DOW

Hearing Officer

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION
OF

JOSEPH W. & LILLIAN SWEENEY

FOR A DETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR
1961

The taxpayers having duly filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 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 March 8, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer, Joseph W. Sweeney, appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a resident tax return in which they computed their income tax to be in the sum of \$1,233.43 and claimed payment and credits on their estimated tax of \$2,070.26; that the taxpayers claimed a refund of \$816.83 for overpayment of tax; that a refund of the claimed overpayment of tax of \$816.83 was paid to the taxpayers.

(2) That a notice of deficiency and statement of audit changes were issued on March 29, 1965 (File No. 1-6466922) finding additional income tax and interest due in the amount of \$2,072.82 on the basis that the taxpayers' payments and credits on their 1961 estimated tax was in the amount of \$70.26.

(3) That the taxpayers maintained a checking account with

the Franklin National Bank at its Mineola, New York office; that it was alleged by the taxpayers' accountant that on or about November 22, 1961 he mailed a check drawn on the taxpayers' checking account with the Franklin National Bank in the sum of \$2,000 payable to the New York State Income Tax Bureau together with their amended New York State Declaration of Estimated Income Tax to the New York State Income Tax Bureau.

(4) That the records of the Franklin National Bank show that the check for \$2,000 never cleared the bank nor does the bank have any entries with regard to the check for the period commencing November 1961 to June 1962; that the taxpayers did not submit any other evidence to show that they made payment or were entitled to any credits in addition to the \$70.25 credit allowed them on their 1961 estimated tax.

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

DECIDES:

(A) That by virtue of finding of fact (3) and (4), the taxpayers did not make any payments nor were they entitled to any credits on their 1961 income tax in excess of \$70.25.

(B) That, accordingly, the notice of deficiency and statement of audit changes for the year 1961 (File No. 1-6466922) are correct and do not include any tax or other charge which could not have been lawfully demanded; that the taxpayers' petition for redetermination of a deficiency or for refund of personal income

taxes for the year 1961 be and the same is hereby denied.

Dated: Albany, New York this 8th day of May, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER