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1968 Income Tax Determinations A-Z

BUREAU OF LAW

MEMORANDUM Hart, Alfred & Claire

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Application of ALFRED & CLAIRE HART 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 at 80 Centre Street, New York, New York on December 20, 1967. The taxpayers defaulted. A letter was thereafter written to the taxpayers requesting information why they defaulted. The taxpayers did not give any reason for their default.

Taxpayers filed a resident income tax return for the year 1959 in which they reported taxable income in the sum of $6,719.11. They claimed deductions for medical expenses in the sum of $2,823.64, expenses in connection with supervision and control of investments in the sum of $8,708.72, stock transfer tax in the amount of $33.25 and New York State income tax in the amount of $667.51. An assessment was issued on July 5, 1962 (Assessment No. AD 013114) assessing additional normal tax due in the amount of $262.07 on the basis that medical expenses in the amount of $463.37 were disallowed as not properly deductible. Of the $8,708.72 claimed for expenses in connection with supervision and control of investments, $5,008.72 was allowed and $3,700.00 was disallowed as unsubstantiated and excessive in view of the activities carried on by the taxpayers. State income taxes of $667.55 were disallowed since such taxes are not properly deductible, and stock transfer tax of $33.25 was disallowed as a capital item.

On July 9, 1962 the taxpayer wrote a letter, a copy of which is in the file, objecting to the disallowance as follows:

"At this time I question your disallowance of $3,700.00 for supervision and control of investments. Of this amount $3,300.00 represents fees paid and is substantiated by cancelled checks. I am sure income tax was paid by the recipients of these payments and your disallowance would be double taxation.

"For twelve years the Guaranty Trust Co. of New York, under an agency account, serviced my investment portfolio and under prevailing rates the costs for these services would be between $4,000.00 and $7,000.00. After my retirement I discontinued their services and under present conditions I save at least 50% and get more and better service. Federal Income Tax Bureau allows this deduction and all previous State Tax Reports indicate this deduction has been allowed."

The tenor of the taxpayer's letter was in effect a statement that $3,700.00, of which he was able to prove $3,300.00, was a very reasonable amount of expense incurred in supervising and controlling of investments and that previously where such services were performed by outside parties, the amount would have been doubled. The taxpayer either ignored or deliberately omitted the fact that he had deducted not $3,700.00 but an amount in excess of $8,700.00 of which he was allowed over $5,000.00. On the basis of such letter, the $3,700.00 disallowance was cancelled on August 24, 1962 resulting in effect in an allowance of the entire $8,708.72 as expenses for servicing the taxpayer's investments.

Thereafter the Internal Revenue Service made an audit of the taxpayer's return and allowed only $3,063.60 of the expenses claimed for supervision and control of investments and disallowed the amount of $5,645.12. The amount allowed by Federal very closely approximates the amount that the taxpayer claimed in his letter could be substantiated by cancelled checks. The Internal Revenue Service further disallowed a medical deduction to the extent of $2,204.44. On the basis of such Federal audit an assessment was issued on December 27, 1963 (Assessment No. AB 053319) assessing additional normal tax due in the sum of $431.29 to conform with the Federal audit.

On November 10, 1964 a further assessment was issued for the year 1959 (Assessment No. AB 56968) assessing $75.00 additional tax due correcting an error in computation of the tax due in the assessment issued on December 27, 1963.

On April 23, 1965 a collection letter was sent to the taxpayers asking for payment of $81.75 for income tax and interest due for the year 1959 due under the assessment issued on November 10, 1964. In response to that letter the taxpayers, on April 27, 1965, sent a check for $81.75 to the Income Tax Bureau which was deposited. The check contained a restrictive endorsement as follows:

PAYMENT IN FULL FOR ALL
UNPAID N.Y. PERSONAL INCOME
TAX FOR THE TAXABLE YEAR
1959 AS PER YOUR LETTER
HM 900839 - DATED 4-23-65.

The taxpayers contend that the issuance of the Assessment AB 01314 and the payment of tax due thereunder as recomputed does not permit the Income Tax Bureau to issue a new assessment for the year 1959 and that the payment of $81.75 by check containing a restrictive endorsement constituted a compromise and settlement of the taxpayers' liability for the year 1959.

Section 373 of the Tax Law permits the assessment of tax due at any time if the taxpayer fails to report a change or correction by the Commissioner of Internal Revenue. It does not appear that a notification of Federal changes was filed by the taxpayers. The

statute does not contain any restriction on the issuance of an assessment where the taxpayer fails to report such a change. The acceptance by the Department of the check marked "Paid in full" for less than the amount of the tax due does not constitute a waiver, compromise or accord and satisfaction of the taxpayers' liability. This has been discussed in a memorandum from Counsel Russell to Deputy Commissioner Green dated October 22, 1957, a copy of which is attached. See also the memorandum in the matter of Stephen Nikonchik, a copy of which is also attached.

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

/s/ FRANCIS V. DOW

Hearing Officer

FVD:dv

Encs.

February 1, 1968

2-5-68

L 9 (11-65)

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Application of Stephen Nikonchuk for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law for the Year 1957

A hearing with reference to the above matter was scheduled before me on March 9, 1967 at 80 Centre Street, New York, New York. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are whether the taxpayer was subject to the imposition of penalty and interest because of the late filing of his return and payment of tax and whether the deposit of his check marked "paid in full" by the Department discharged the taxpayer's liability for 1957.

As a result of a District Office field follow-up, on November 1, 1962 the taxpayer filed an income tax return for the year 1957. He claimed specific deductions of $963.08 and computed his tax liability, penalty and interest to be in the sum of $162.21. The penalty was computed at the rate of twenty-five per cent of the tax. Interest was computed at the rate of one per cent per month. Although the taxpayer signed the return, he refused to sign a deferred payment agreement objecting to the imposition of the penalty and interest. He made no payment of his tax liability at that time.

On December 19, 1963, an assessment (Assessment No. AB 053012) was issued for the year 1957 in which the taxpayer's liability was recomputed and assessed normal tax of $124.89, penalty at the rate of twenty-five per cent in the amount of $31.22 and interest computed at the rate of one per cent per month in the amount of $86.17 which totaled $242.28 based on the Federal audit of his return which disallowed his itemized deductions as substantiated. The taxpayer mailed his check in the amount of $124.89, the amount of basic tax, together with his application for revision or refund. The check was marked "paid in full". It was deposited by the Department and applied to the taxpayer's obligation. The taxpayer's application includes the statement, "Enclosed is a check for the amount that is claimed I owe".

The taxpayer did not submit any evidence to substantiate his itemized deductions nor did he contest their disallowance. His objection was directed to the imposition of penalty and interest.

Section 376(2) of the Tax Law provides that if a taxpayer fails voluntarily to make a return of income or to pay a tax if one is due within 60 days of the time required, he is subject to the imposition of a one hundred per cent penalty and an interest charge at the rate of one per cent per month. The policy of the Department as set forth under E Memorandum 41 provides for a rate of penalty of twenty-five per cent of tax and the interest rate of one per cent per month to be applied where a return is filed as a result of a District Office field follow-up.

While the policy of the Department is not to accept a check marked "paid in full" where it is less than the amount of the assessment (see memorandum of Counsel Best to Mr. Gallman, dated March 21, 1964, a copy of which is attached hereto) the deposit of the check by the Department in the amount of the basic tax did not constitute a waiver, compromise or accord and satisfaction of the taxpayer's liability for the payment of penalty and interest. The circumstances of filing an application for revision and refund at the time the check was tendered by the taxpayer is inconsistent with its delivery and acceptance as full satisfaction of the taxpayer's liability. Taxes cannot be compromised merely by the acceptance of a check for less than a full payment. This has been discussed in a memorandum from Counsel Kassell to Deputy Commissioner Greene, dated October 22, 1957, a copy of which is attached hereto.

While the Commission has power to waive penalty and interest, there was no showing that the Commission intended to accept the taxpayer's check as such a waiver. The statement in the application that the check was in "the amount that is claimed I owe" is misleading. Negligence, oversight or thoughtlessness does not create a waiver (see Alsen American Portland Cement Works v. Degnon Contracting Co., 222 N. Y. 34).

However, the taxpayer's application for revision or refund can be construed as a petition for a waiver of the penalty and interest assessed. I do not recommend such a waiver by the State Tax Commission since the taxpayer did not present any evidence which would justify his delay in filing his return or paying the tax due. The taxpayer did not show any hardship to warrant the granting of a waiver of the penalty and interest.

For the reasons stated above, I recommend that the determination of the State Tax Commission denying the taxpayer's application in the above matter be in the form submitted herewith.

Francis V. Rose
Hearing Officer

FVD:rlp
Enc.
May 16, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION	:
OF	:
ALFRED A CLAIRE HART	:
FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1959	:

The taxpayers 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 on December 20, 1967, at which hearing the taxpayers defaulted and a letter was sent to them requesting information why they defaulted and the taxpayers not giving any reason for the default, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a resident income tax return for the year 1959 in which they reported taxable income of $6,719.11; that an assessment was issued for the year 1959 (Assessment No. AB 053319) on December 27, 1963 which assessed additional normal tax due in the sum of $431.29 to conform with the changes made on the Federal audit of the taxpayers' return; that on the Federal audit of the taxpayers' 1959 return claimed medical deductions of $2,204.44 and expenses claimed for supervision and control of investments in the amount of $5,645.12 were disallowed as unsubstantiated.

(2) That on November 10, 1964 a further assessment was issued for the year 1959 (Assessment No. AB 96968) assessing $75.00 additional tax due correcting an error in the computation of the tax due in Assessment No. AB 053319 issued on December 27, 1963; that in response to a collection letter dated April 23, 1965 taxpayers sent a check in the amount of $81.75 in payment for income tax and interest due which check was deposited and contained the following restrictive endorsement:

PAYMENT IN FULL FOR ALL
UNPAID N.Y. PERSONAL
INCOME TAX FOR THE TAXABLE
YEAR 1959 AS PER YOUR LETTER
NO 900839 - DATED 4-23-65

(3) That the taxpayers failed to submit sufficient documentary or other satisfactory evidence to substantiate the disallowed medical expenses and the disallowed expenses claimed for supervision and control of investments.

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

DETERMINES:

(A) That the deposit of the taxpayers' check in the amount of $81.75 was not a waiver, compromise, settlement or accord and satisfaction of the taxpayers' liability as set forth in Assessment No. AB 053319 for the year 1959.

(B) That by reason of finding of fact #3 above, the taxpayers have failed to sustain the burden of proof on their application for revision or refund; accordingly the assessment for the year 1959 (Assessment No. AB 053319) does not include any tax or other charges which could not have been lawfully demanded; that the taxpayers' application for revision or refund

of personal income taxes be and the same is hereby denied.

Dated: Albany, New York, this 13th day of February , 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

COMMISSIONER