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Janovsky, Harold B.

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State Tax Commission

Ira J. Palestin

**Harold L. and Ida Janovsky, his wife
Petition for Redetermination of Deficiency for year 1963.**

In this case taxpayers defaulted at a formal hearing scheduled for May 22, 1967, on their petition for redetermination of deficiency in the sum of \$51.10 for tax year 1963. The ground of their petition sworn to February 15, 1965 is that taxpayer Harold L. Janovsky was an employee in 1963 of Flavorex Co., Inc. in Baltimore, Maryland, which withheld from his salary \$51.10 on account of Maryland resident individual income taxes. Such withheld sum was successfully sought by these taxpayers as overpayment and refund on Maryland resident income tax returns they jointly filed for 1963, the refund being paid to them.

On New York joint personal income tax returns these taxpayers filed as residents for 1963 they claimed a credit of \$51.10 as income tax imposed by Maryland. This claim was disallowed and a notice of deficiency in the sum of \$51.10 with interest was issued by Income Tax Bureau.

The petition should be denied. A New York resident's credit for income taxes paid to another state is allowable in avoidance of double taxation on the same income. Here the Maryland withholding was refunded to taxpayers by the State of Maryland. In Rev. Rul. 59-101, C.B. 1959-1, 189, 191, it was held that a credit against United States income tax is allowable in the amount of Puerto Rico income tax withheld or paid as estimate "to the extent such amount represents a legal and actual tax liability."

This memorandum accompanies a proposed determination denying the petition.

Ira J. Palestin

Ira J. Palestin

Dated: February 1, 1968

2-26-68

STATE OF NEW YORK
STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION
OF

HAROLD L. and IDA JANOVSKY

FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1963.

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Taxpayers, Harold L. Janovsky and Ida Janovsky, his wife, having duly filed a petition sworn to February 15, 1965 for redetermination of deficiency or for refund of personal income taxes for the year 1963 (File No. 3-3463447), and a hearing thereon having been scheduled at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on May 22, 1967 before Ira J. Palestin, Hearing Officer, and taxpayers having defaulted in appearance at the said scheduled hearing, and the papers, correspondence and file in this matter having been reviewed and considered,

The State Tax Commission hereby finds:

(1) Taxpayer, Harold L. Janovsky, in the year 1963 was in the employ of Flavorex Co., Inc. in the City of Baltimore, Maryland. For such year 1963, taxpayers Harold L. and Ida Janovsky filed State of Maryland Form 502 resident individual income tax return. Attached to such form was a withholding tax statement showing that Flavorex Co., Inc., the employer of Harold L. Janovsky, had withheld on account of Maryland individual income tax the sum of \$51.10. At the bottom of p. 1 of the aforesaid Maryland resident individual income tax return, taxpayers Harold L. and Ida Janovsky claimed the sum of \$51.10 as an overpayment and refund due them.

(2) For the same year, 1963, these taxpayers timely filed a joint IT-201 New York State income tax resident return to which they attached an IT-2101 withholding statement showing \$282.20 withheld on wages of \$8500. from employer Flavormatic Industries, Inc. of 59-12 37th Avenue, Woodside, New York. This sum of \$282.20 taxpayers deducted as a credit against tax shown on their joint 1963 New York State resident return.

(3) At a preliminary hearing held before Tax Administrative Supervisor Sidney Dannerstein at 80 Centre Street, New York, N.Y., these taxpayers' representative, Gabriel T. Pap of 51 East 67th Street, New York, N.Y. (for whom a power of attorney from taxpayers is on file) appeared in their behalf and stated that taxpayers were entitled on their New York State resident income tax return to a credit of \$51.10 because such sum, withheld by taxpayer Harold L. Janovsky's Maryland employer, was imposed by the State of Maryland, even though taxpayers' claim for refund by the State of Maryland was honored and the refund paid.

(4) On February 8, 1965 a statement of audit changes was issued by Income Tax Bureau in Albany to these taxpayers, disallowing the sum of \$51.10 claimed for credit as tax paid to the State of Maryland. With it was issued a notice of deficiency in the sum of \$51.10 with interest.

(5) In the aforesaid petition of these taxpayers for a formal hearing herein, the statement is made at p.2 that the audit changes and notice of deficiency issued by Income Tax Bureau in the sum of \$51.10 due as additional personal income tax is error "... because \$2,422.66 is subject to the Maryland income tax even though no Maryland income tax is actually due."

On the foregoing findings and all the evidence herein, the State Tax Commission hereby

DECIDES:

That the statement of audit changes and notice of deficiency for payment as New York resident income taxes for the year 1963 correctly states taxpayers' income tax liability for that year, and that the same was lawfully due and owing, and that the petition for redetermination of deficiency or for refund of personal income tax in such amount is hereby denied. Tax Law, §620. Cf. Rev. Rul. 59-101, C.B. 1959-1, 189, 191.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

A. BRUCE MANLEY

Commissioner

/s/

SAMUEL E. LEPLER

Commissioner