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BUREAU OF LAW

*Income Tax Determinations**A-2*

MEMORANDUM

Page, Charles E. and Irene

TO: State Tax Commission

FROM: Vincent P. Molinoux, Hearing Officer

SUBJECT: CHARLES E. PAGE AND IRENE PAGE--
Application for Revision or Refund of
Personal Income Taxes under Article 16
of the Tax Law for the Year 1959

A hearing on the above matter was scheduled for 80 Centre Street, New York, New York, on September 25, 1964, February 17, 1965 and May 24, 1965. Applicant is a pilot for Seaboard and Western Airlines and before each scheduled date he wrote, or had his wife telephone, that due to his flying schedule, he was unable to appear at the time set for the hearing. The hearing was again scheduled for September 19, 1967. In addition to the notice, the taxpayer was advised by letter that no further adjournments would be granted, and unless there was an appearance, the Commission would proceed to a determination on the basis of the material in the file. The taxpayer did not appear either in person or by representative and did not write or telephone.

The application is to review the disallowance of a bad debt deduction of \$6,000 for the year 1959 upon which an assessment of \$256 was issued.

Taxpayer was a resident of New York in 1959 and thereafter moved to New Jersey.

The indebtedness of \$6,000, claimed as a bad debt, was due from one Gonder, a friend of taxpayer. It is represented in part by a note of \$1,300 dated September 7, 1950, the consideration for an automobile sold to Gonder in the fall of 1949, and the balance of \$4,700 consisting of money loaned by taxpayer in April and May 1951.

The file contains a copy of a letter from the debtor to taxpayer's attorney, dated August 13, 1956, in which he outlines his financial difficulties, including a serious illness, which had made it impossible for him to pay the debt.

There is also a further exchange of letters between taxpayer's attorney and the debtor in 1959, indicating there was still some hope, up to that time, of collecting the debt, especially since taxpayer had married and his wife was pushing for collection. The attorney advised the taxpayer in a letter of June 4, 1959 that a judgment against the debtor Gonder, would not be collectible and that he did not recommend suit. The only possibility of collection would be from a windfall to Gonder. Two later letters in the same year by taxpayer's attorney were met with a letter of the debtor

saying that he will authorize his bank to make deductions of \$50 a month which apparently was not done.

There are also references to a life insurance policy of the debtor for \$10,000 to protect his creditors, but since no collection was possible, it would appear that this amount would be payable on death only, and probably would not be applied on the debt to the taxpayer.

The policy of the Income Tax Bureau on bad debts, as set forth in the Bureau Manual, 161, 161(a)3, is based upon AVERY v. Commissioner, (1927) 22 F. 2d 6, 6 AFTR 7019; Mail v. Baize, (1948) 273 App. Div. 1039; Huitt v. Masley, (1944) 292 N.Y. 52 reversing 266 App. Div. 519.

In AVERY v. Commissioner, supra, the Court said that:

"In order to secure a deduction of worthless debts, they must be charged off in the year they are ascertained to be worthless A taxpayer should not be permitted to close his eyes to the obvious, and to carry accounts on his books as good when in fact they are worthless, and then deduct them in a year subsequent to the one in which he must be presumed to have ascertained their worthlessness."

In Mail v. Baize, supra, a bad debt loss claimed in 1937 was shown to have been actually sustained in 1932 and consequently was disallowed.

In Huitt v. Masley, supra, the petitioner was the holder of bonds of Hotel Pierre which was judged bankrupt in 1932. An order staying sale was entered and later vacated delaying the sale to 1933. The Court held that the bonds became worthless in 1932 and could not be claimed as a deduction in 1933.

The present case is somewhat more subjective in that the debt was one of long standing and the taxpayer was not pressing and had apparently no reason to doubt that he would be paid, until the correspondence of 1956. There was a glimmer of hope until 1959 at which time taxpayer's attorney advised taxpayer that a judgment could not be collected. Despite the taxpayer's failure to appear for the formal hearing, it is clear from the exhibits previously submitted, in particular the verifax copy of the letter from taxpayer's attorney dated June 4, 1959, that the taxpayer, in my opinion, was justified in determining that the debt was uncollectible at that time and in claiming a bad debt loss.

For Federal income tax purposes, the debt was considered a long-term loss and was deducted on taxpayer's Federal income tax return in the amount of \$1,000 for each of the years 1959 and 1960. Taxpayer states that it was to be deducted also for 1961 and subsequent years. Although no audit was made, the return was accepted as filed.

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

/s/

VINCENT P. MOLINEAUX

Hearing Officer

VPM:rlp

Enc.

January 16, 1968

1-23-68

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

CHARLES E. PAGE
AND
IRENE PAGE

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

Charles E. Page, having filed an application for revision or refund of personal income taxes assessed under Article 16 of the Tax Law for the year 1959, and a hearing having been scheduled for September 19, 1967, and the taxpayer having been duly notified thereof, and no appearance having been made by the taxpayer or on his behalf, and the documents on file having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer herein filed a resident return of personal income tax for the year 1959 on which the amount shown to be due was paid.

(2) That Assessment No. B-974985 in the amount of \$256 was issued July 31, 1961 based upon disallowance of a bad debt deduction in the amount of \$6,000.

(3) That the indebtedness was due from one Gonder, a friend of taxpayer, and was represented in part by a note of \$1,300 dated September 7, 1950 in consideration for an automobile sold to Gonder in the fall of 1949 and the balance of \$4,700 consisting of money loaned by taxpayer in April and May 1951.

(4) That a letter from the debtor to taxpayer's attorney dated August 13, 1956 outlines his financial difficulties, including a serious illness which had made it impossible for him to pay the debt up to that time.

(5) That a further exchange of letters between taxpayer's attorney and the debtor indicates that there was some hope up to that time of collecting the debt, but that the attorney advised the taxpayer in a letter of June 4, 1959 that a judgment against the debtor Conder would not be collectible and that he did not recommend suit.

(6) That the taxpayer was justified in determining in good faith that the debt was uncollectible in 1959.

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINES:

That Assessment No. B-974985 for the year 1959 is incorrect and improper and should be cancelled and is hereby cancelled in full.

Dated: Albany, New York this 29th day of January, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

A. BRUCE MANLEY
COMMISSIONER

COMMISSIONER