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MEMORANDUM

Income Tax Determinations
A-Z
Starobin, Morris H.

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: MORRIS H. STAROBIN

1954 Assessment #B 407771
1955 Assessment #B 587323

Articles 16 and 16-A

Hearings with reference to the above matter were held before me at 80 Centre Street, New York, N. Y. on October 21, 1963 and February 13, 1964. The appearances and evidence were as shown in the stenographic minutes and the exhibits submitted herewith.

The issues involved herein are: (1) timeliness in the filing of application for revision or refund for the year 1955; (2) disallowance of expenses in connection with refinancing and legal reconditioning of home sold and profit therefrom reported as capital gain; (3) disallowance of medical expenses; and (4) whether commission income was subject to unincorporated business tax.

The taxpayer filed a timely application for revision or refund with respect to the year 1954. As a result of a preliminary hearing with respect to said assessment, certain deductions were allowed and a partial cancellation was issued. The taxpayer is not contesting the assessment for the year 1954.

The assessment for the year 1955 was issued on April 15, 1959, based upon failure to furnish information as requested. On July 22, 1959, the accountant for the taxpayer wrote the department that with reference to the 1955 assessment against the taxpayer, "He requested a hearing on this matter at which time he intended to prove he owes very little. So far your department has sent no date." A formal application for revision or refund (Form IT-113) for the year 1955 was not filed until October 26, 1962.

In the case of City Bank Farmers Trust Company v. Graves, 259 App. Div. 68, Appeal denied 2/59 App. Div. 940 affirmed 30 N.Y. 2d 211, it was held that Section 374 of the Tax Law does not require the taxpayer to draft his application in precise and exact allegations.

I am of the opinion that the letter of the taxpayer's accountant dated July 22, 1959 constituted a timely application for revision or refund for the year 1955.

To: State Tax Commission

RE: MORRIS H. STAROBIN

Although the taxpayer appeared at the first hearing in connection with the issue of timeliness, he did not appear at the subsequent hearing in connection with the substantive issues. However, the accountant submitted medical bills substantiating the medical deductions. I am therefore of the opinion that the medical expenses should be allowed in full.

With respect to the deduction of \$4,375.87 claimed for "refinancing, legal and reconditioning of home," the taxpayer's representative stated at the hearing that this was in connection with renovating and preparing the residence of the taxpayer located at Hewlett Harbor, N. Y. for re-sale. The taxpayer sold his residence sometime in December, 1955. It is to be noted that the taxpayer elected to consider the sale of his home as a capital gain and reported the profit of the sale of same as such. I am of the opinion that the expenses incurred in connection therewith should have been included in the cost of the property and not taken as a normal tax deduction. It is to be noted that the taxpayer included in the cost of his residence the sum of \$4,450 expended for furniture. I therefore believe that no adjustment should be made on the capital gain tax reported.

With respect to the commission income reported by the taxpayer in the sum of \$11,704.00, it appears that the taxpayer who was an officer and stockholder of Bridge Plaza Elect. Supply Co. in addition to his salary also received a bonus at the end of the year based upon the profits of the corporation. I am of the opinion that the sum of \$11,704 represented additional compensation as an employee not subject to unincorporated business tax in accordance with the provisions of Section 386 of the Tax Law; that the assessment with respect to unincorporated business tax should be cancelled in full and that the assessment with respect to normal tax should be corrected so as to allow the taxpayer the medical expenses claimed. A recomputation of the assessment is set forth in the annexed proposed determination.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantiated in the form submitted herewith.

/s/

SOLOMON SIES

Hearing Officer

January 9, 1968

1-15-68

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

MORRIS E. STAROBIN

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 AND UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1955

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Morris E. Starobin, the taxpayer herein, having filed a timely application for revision or refund of personal income taxes under article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the year 1955 and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, on the 21st day of October, 1963 and on the 13th day of February, 1964 before Solomon Sles, Hearing officer of the Department of Taxation and Finance, at which the taxpayer appeared personally on October 21, 1963 and having been represented by Harry Cohen, C.F.A. and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer Morris E. Starobin filed a New York State income tax Resident Return for the year 1955 in which he reported salary income in the sum of \$14,300; that in addition, the taxpayer reported other income consisting of commissions in the sum of \$11,704; that the taxpayer deducted the sum of \$4,375.80 for "refinancing legal and readjusting of home", that in addition the taxpayer deducted medical expenses in the sum of \$505.15; that the taxpayer also reported capital gain tax in the sum of \$159.66; that on April 15, 1959 the Department of Taxation and Finance made an additional assessment against the taxpayer for the year 1955 (Assessment #B-587325) disallowing the deduction claim for "refinancing, legal and readjusting of home" and further disallowed the entire amount claimed for

medical expenses; that accordingly, additional normal and net capital gain tax was computed to be due in the sum of \$312.46; that in addition, the commission income was held to be subject to the incorporated business taxes and unincorporated business tax was computed to be due in the sum of \$175.51; that said assessment was based upon the failure of the taxpayer to furnish the necessary information.

(2) That the taxpayer's representative submitted medical bills substantiating the medical deductions in the sum of \$1,346.70; that the medical expenses are hereby allowed in full.

(3) That the deduction in the sum of \$4,375.67 claimed for "refinancing, legal and reconditioning of home" represented repairs and other expenses incurred by taxpayer during the year in issue in connection with a residence owned by him at 44100 Harbor, New York which he sold sometime in December, 1935; that the taxpayer elected to consider the sale of his home as a capital gain and reported the profit from the sale of said residence as a capital gain; that the expenses incurred therewith should have been included in the cost of the property and not taken as a normal tax deduction.

(4) That during the year 1935 the taxpayer was employed by Bridge Plann Electric Supply Inc. and reported on his return salary income from said employer in the sum of \$3200; that the sum of \$11,704 reported by the taxpayer as "commission income" was paid to him by Bridge Plann Electric Supply Inc. as a bonus at the end of the year and represented additional compensation as an employee.

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

DETERMINES:

(A) That the commission income received by the taxpayer as more fully set forth in Finding (4) above, represented additional compensation as an employee and was not subject to unincorporated business tax in accordance with the provisions of Section 306 of the

tax law; that the additional assessment of unincorporated business tax made against the taxpayer for the year 1955 was not due and not lawfully demanded; that the unincorporated business tax assessed in the sum of \$174.53 is and the same is hereby cancelled in full.

(2) That the taxpayer was entitled to claim a deduction for medical expenses in the sum of \$1,344.79 as set forth in Finding (1) above; that the deduction of \$4,375.87 was not a proper annual tax deduction as more fully set forth in Finding (3) above; that the assessment of additional normal and net capital gain tax is hereby recomputed as follows:

Refinancing, legal and reconditioning of home
expenses claimed, disallowed
Balance before medical deductions reported
Corrected balance
Less medical deduction
Net income
Personal exemption claimed
Taxable balance

0 4,375.87
- 1,344.79

3,031.08
- 1,000.00

2,031.08

Normal tax on above
Net capital gain tax reported
Total normal and net capital gain tax
Less reduction
Total normal and net capital gain tax due
Total normal and net capital gain tax computed
Additional normal and net capital gain tax due

793.75
1,000.00

2,031.08

2,031.08

2,031.08

\$134.79

(3) That accordingly the assessment for the year 1955 (assessment #2-587325) except as modified in accordance with determinations (1) and (2) above is correct; that said assessment, as so modified, does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund filed with respect thereto, except as modified herein, is and the same is hereby denied.

DATED: Albany, New York on the 17th day of January, 1968

STATE TAX COMMISSIONER

/s/

JOSEPH H. MURPHY

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