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## BUREAU OF LAW

Income Tax Determin.

## MEMORANDUM

A-2  
Guinan, Walter B.

TO: State Tax Commission

FROM: Solomon Sles, Hearing Officer

SUBJECT: WALTER B. GUINAN

1952 Assessment No. AA 959846  
1956 Assessment No. B 631662

Request for Waiver of Penalty and  
Interest in the Amount of \$1,586.90

The taxpayer has submitted a bank check in the amount of \$2,326.95 in full payment of the basic taxes and has requested a waiver of penalty and interest in the amount of \$1,586.90.

A hearing was held in the above matter at the New York City office on April 17, 1967.

The primary issues involved are: (1) timeliness in filing applications for revision; and (2) timeliness in filing a demand for hearing. The substantive issue involves allocation of earnings of a nonresident.

The taxpayer did not file a New York State income tax return for 1952. Marshall Field and Co., of Durham, N.C. filed a Form 102 (Report of Tax Withheld at Source) which indicated that the taxpayer was paid \$5,356.65 in 1952 for services rendered within New York State, while a nonresident. Bigelow-Sanford Carpet Co., Inc. of New York City filed a Form 102 indicating that the taxpayer was paid \$1,680.45 in 1952 for services within the State of New York while a nonresident. On January 26, 1956, the Income Tax Bureau issued an assessment against the taxpayer for the year 1952 (Assessment No. AA 959846) imposing additional personal income tax in the amount of \$33.38 on the basis of the reports filed by the aforementioned employees.

On July 22, 1958, the Income Tax Bureau mailed a letter to the taxpayer advising him that his employer had filed a Form 102 indicating that the compensation paid him in 1956 was apportioned as to income earned both within and without the State; that the records failed to disclose the filing of a return by him for said year; that a nonresident return was enclosed with instructions to fill out and file said return for 1956 and to submit a

separate schedule showing services performed outside the State including dates, number of days and the location and nature of the services rendered. As the taxpayer failed to furnish the information requested, an assessment was issued on July 6, 1959 (Assessment No. B 631662) for the year 1956 including the entire compensation received by the taxpayer in said year amounting to \$48,750 as attributable to New York sources and imposed additional tax in the amount of \$2,682.60.

On April 27, 1961, Assessment No. B 849347 for the year 1957 was issued in the amount of \$2,627.20 for failure to substantiate an allocation of salary income.

On July 13, 1961, the taxpayer filed applications for revision of the 1952 and 1956 assessments. He claims he also filed an application for revision of the 1957 assessment on the same date. On September 16, 1964, the Income Tax Bureau cancelled, in full, the assessment for 1957.

For the tax year 1963 (File No. 3-5980763), there was an overpayment of \$468.57 which was applied as follows: \$32.92 in full payment of the 1952 assessment and \$435.65 to the 1956 assessment.

In 1956, the taxpayer worked 66 days within the State and 173 days outside the State. If the taxpayer had filed timely applications for revision and for demand for hearing with respect to 1956, there would be no additional tax due for said year. At the hearing, the taxpayer withdrew his application for revision for the year 1952.

The taxpayer claims that he was separated from his wife on April 15, 1959; that he was divorced from his former wife in 1960; that his former wife withheld his mail; that he did not receive the assessments or correspondence from the Department and was not aware of such assessments until collection efforts were instituted in 1961; that he was advised by the out-of-state collection unit in July, 1961 that if applications for revision were filed, that would "close the matter".

I am of the opinion that the taxpayer failed to file timely applications for revision and a demand for a hearing with respect to the year 1956.

Computation of amount due up to February 15, 1969 is as follows:

Normal tax due	\$2,682.60
Penalty at 5%	134.13
Interest from July 6, 1959 to April 15, 1964 (date 1963 overpayment was applied)	<u>777.92</u>
Total tax, penalty and interest due on April 15, 1963	3,594.65
1963 refund offset	<u>255.62</u>
Net	3,339.03
Interest from April 16, 1964 to February 15, 1969	<u>674.82</u>
Total tax, penalty and interest to February 15, 1969	3,913.85
Total interest and penalty re- quested to be waived	<u>1,586.99</u>
Amount offered	<u>\$2,326.86</u>

In view of the fact that there would have been no additional tax due from the taxpayer for 1956 had he filed a non-resident return for said year or timely applications for refund and demand for a hearing and the unusual circumstances involved, I recommend that penalty and interest be waived.

SOLOMON SIES  

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Hearing Officer

SS:rlp/dc

February 25, 1969

*Sent to Commission 3/4/69*  
*Milton Klein*

3/11/69

Approved  
E..H. Best 2/26/69

A. Bruce Manley 3/11/69

O.K. J.H.M. 3/12/69