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BUREAU OF LAW

Income Tax Determinations
A-2
Hennessey, John F., Jr.
Barbara

MEMORNADUM

TO: The State Tax Commission

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: Petition of John F. and Barbara Hennessy, Jr. for redetermination of a deficiency and for refund of personal income taxes under Article 22 of the Tax Law for the year 1961

A hearing on the above entitled proceeding was held before me on February 13, 1968 at 80 Centre Street, New York, New York. Appearances and exhibits were as noted on the stenographic transcript.

Taxpayers filed a joint personal income tax nonresident return, form IT-203, for 1961, reporting New York Adjusted Gross Income of $26,433.53 out of Federal Adjusted Gross Income of $60,101.52. New York itemized deductions of $8,879.98 were computed, pursuant to statute, as a percentage of the Federal itemized deductions, resulting in New York Taxable Income of $13,733.61, after credit for exemptions in the sum of $4,200.00. A tax of $722.82 was paid.

Taxpayers' income for 1961 was increased $3,886.88 by Federal changes which disallowed certain itemized deductions, including employee's business expenses attributed by the taxpayers to salary earned by John F. Hennessy, Jr. from his New York employer. The Income Tax Bureau adjusted the Federal increase to $3,877.07, increased taxpayers' New York income by $1,941.85 and issued a Notice of Deficiency (file No. 5820702) in the amount of $159.22 of additional tax and interest. This increase in New York income was the same percentage of the disallowed deductions as taxpayers' New York Adjusted Gross Income was of the Federal Adjusted Gross Income for 1961. Taxpayers had previously, on October 15, 1962, claimed a refund of $55.49 based on the same contentions set forth in their subsequently filed petition, which claim was denied on September 22, 1965. On December 10, 1965 taxpayers filed a petition for redetermination of the deficiency and for refund, contending that their employee's business connected itemized deductions were allowable to the extent that their New York salary income was a percentage of their total salary income, and not limited to the extent that their New York Adjusted Gross Income was a percentage of their Federal Adjusted Gross Income. At the hearing taxpayers' representative amended the claim for refund to $58.37, based on a more accurate computation, but continued to assert the claim on the same ground.

The issue involved is whether itemized employee's business deductions of nonresident taxpayers are allowable in excess of the statutory limitation contained in the Tax Law. Taxpayers do not contest the Federal disallowance of the deductions in substance or amount, but object solely to the computation of the apportionment to New York income.

The taxpayers were residents of Connecticut in 1961. In that year they filed a New York Nonresident Income Tax Return on which they apportioned $26,413.53 of their Federal Adjusted Gross Income of $40,928.57 to New York. The allocation to New York consisted of $26,033.53 out of salaries of $38,049.01 paid by a New York employer and $400.00 in director's fees. The balance of their Federal Adjusted Gross Income consisted of dividends, capital gains and tax refunds. On their New York return the taxpayers apportioned their itemized deductions of $10,280.87, allocating $3,879.98 to New York pursuant to subsection (c) of Section 635 of the Tax Law, which directs that the itemized deductions of a nonresident be limited to the percentage that his New York Adjusted Gross Income is of his Federal Adjusted Gross Income. Based on Federal changes the Income Tax Bureau decreased taxpayers' itemized deductions by $1,241.86, the portion of the total disallowance of $3,877.07 allocable to New York income as computed in the same manner.

Taxpayers object to imposition of the additional tax, and request a refund, claiming, (1) that the limitation contained in subsection (c) of Section 635 should be computed on the percentage their salary income allocated to New York is of their total salary income, only, and (2) that enactment of Section 635 was intended to distinguish between business deductions and nonbusiness deductions so as to permit computation in the manner petitioners request. Taxpayers contend that itemized deductions must be apportioned into two groups under the statute, for the purpose of permitting a greater allocation for business deductions. Taxpayers claim that not allowing such allocation as they request is inequitable. They submit an agreement between taxpayer John F. Kennedy, Jr. and his New York employer, Syron and Kennedy, Inc. which requires John F. Kennedy, Jr. " . . . to defray all expenses incurred by him . . . ," and claim that such agreement requires allocation of his employee's business expenses solely with respect to his salary income.

Under Article 16 of the Tax Law, for years prior to 1961, such allocation may have been permissible. However, in such years nonresident taxpayers were permitted no deductions, except contributions to the United States for exclusively public purposes and to New York organizations as provided by Section 360(10)(f), and, as provided by Section 360(11), deductions connected with income from sources within the State, and periodic payments of alimony or separate maintenance includible in the Adjusted Gross Income of the recipient.

For the years 1961 and thereafter itemized deductions of nonresident taxpayers are governed by the provisions of Section 635 of Article 22, which, at subsection (c) requires, in cases where Federal Adjusted Gross Income exceeds New York Adjusted Gross Income by more than $100.00, that Federal itemized deductions as modified shall be limited by the percentage which New York Adjusted Gross Income is of Federal Adjusted Gross Income. This computation permits a nonresident taxpayer additional deductions of a personal nature not formerly deductible. Subsection (d) of Section 635 provides for alternate computation of a nonresident taxpayer's itemized deductions, with similar limitations as contained in Article 16, in cases where there is no agreement between New York and the state of residence of such taxpayer with regard to furnishing information relating to employment of New York residents in such other state. As there was such an agreement in effect for 1961 between the State of New York and the State of Connecticut, the provisions of subsection (c) of Section 635 are applicable to petitioners in this proceeding. While it cannot be ascertained from the information in the file with certainty, it appears that the taxpayers may have received a greater economic benefit under subsection (c) of Section 635 than they would have under subsection (d), or under the provisions of Article 16. They request, nevertheless, that certain of their deductions be permitted to an extent greater than allowed by subsection (c) of Section 635, which is applicable to them. There is no discretion vested in the Tax Commission to substitute any method of computation of itemized deductions other than that provided by the Tax Law. The computation of taxpayers' itemized deductions by the Income Tax Bureau was in accord with the direction contained in Section 635 of the Tax Law, and in accord with the regulation promulgated thereunder at 20 NYCRR 132.18. A state may distinguish between residents and nonresidents in allowing deductions, and it is not required that income tax deductions be related to income derived from sources within the state. Hamblin v. State Tax Commission, 285 App. Div. 694, 146 N. Y. S. 2d 179, aff'd 1 N. Y. 2d 680.

Accordingly, I am of the opinion that there is no authority for granting any of the relief requested by the petitioners; that no computation of itemized deductions of nonresidents may be made except as provided in the Tax Law; that the Notice of Deficiency imposing additional taxes on the petitioners and the denial of their claim for refund should be sustained; and that the petition for redetermination and for refund should be, in every respect, denied.

The decision of the Tax Commission should be substantially in the form submitted herewith.

s/s Alfred Rubinstein

AR:sg
Enc.
JS October 10, 1969

Re: John F. and Barbara Kennedy, Jr.

Dear Mr. Rubinstein:

I am returning herewith the file and proposed decision.

While I agree with your conclusions, I am of the opinion that in Paragraph (A) of the decision at line 2 (p. 3) the word "understated" is inaccurate and should be "overstated."

MILTON KOERNER

October 22, 1969

Enclosure

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION	:
OF	:
JOHN F. AND BARBARA KENNEDY, JR.	:
FOR REDETERMINATION OF A DEFICIENCY AND FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1961	:

John F. and Barbara Kennedy, Jr. having filed a petition for redetermination of a deficiency and for refund of personal income taxes under Article 22 of the Tax Law for the year 1961, and a hearing on the petition having been held on February 13, 1963 at 80 Centre Street, New York, New York, before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers appeared by their representative, Saul Cohen, CPA, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That for the year 1961, the taxpayers, residents of the State of Connecticut, filed a joint personal income tax non-resident return, form IT-203 reporting Federal adjusted gross income of $60,101.52 of which $26,433.53 was reported as New York adjusted gross income; that taxpayers' New York adjusted gross income consisted of an allocation to New York of $26,033.53 out of salaries of $36,049.01 paid to John F. Kennedy, Jr. by his New York employer, Syntex & Kennedy, Inc. and $400.00 paid to him as director's fees; that the balance of taxpayers' Federal adjusted gross income consisted of dividends, capital gains and tax refunds; that taxpayers reported New York taxable income of $13,753.61 after computing New York itemized deductions of $8,979.92 and exemptions of

$4,200.00; that taxpayers reported and paid New York personal income taxes of $722.58; that the State of Connecticut, for the year 1961, had an agreement with New York with regard to the furnishing of information relating to employment in Connecticut of New York residents.

(2) That based on Federal changes made for the year 1961 the Income Tax Bureau increased the taxpayers' New York taxable income by $1,841.86 to $15,194.87 and issued a Notice of Deficiency (File No. 9860702) on October 11, 1963 imposing additional taxes and interest against the taxpayers in the total sum of $159.82; that the Federal changes as modified by the Income Tax Bureau, disallowed a total of $3,277.07 of taxpayers' itemized deductions; that the amount disallowed for the purpose of computing taxpayers' New York taxable income was the same percentage of the total of Federal disallowances as taxpayers' New York adjusted gross income was of their Federal adjusted gross income.

(3) That on October 15, 1963 the taxpayers filed a claim for refund of 1961 New York State income taxes in the sum of $55.49; that such claim for refund was denied on September 22, 1965; that on December 10, 1965, taxpayers filed a petition for redetermination of the deficiency set forth on the Notice of Deficiency issued on October 11, 1963 and the denial of their claim for refund made on September 22, 1965; that at the hearing on their petition, the taxpayers modified and reduced their claim for refund to $28.37.

(4) That during 1961 John F. Kennedy, Jr. was employed, as Executive Vice-President, by Syska & Kennedy, Inc. consulting engineers, who maintained their office and principal place of business in New York; that John F. Kennedy, Jr. was employed under a written contract which required him to defray the expenses he incurred for entertainment of clients and promotion of business; that he performed his duties on behalf of his employer both within

New York and without New York; that the taxpayers have made no objection to the disallowance of their itemized deductions by the Treasury Department, nor in total as modified by the Income Tax Bureau but object solely to the allocation to New York of such disallowance as made by the Income Tax Bureau in the same percentage as their New York adjusted gross income is of their Federal adjusted gross income; that taxpayers contend that their employee's itemized business deductions should be allocated to New York in the same percentage as their salary income allocated to New York is of their total salary income.

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

DECIDES:

(A) That the taxpayers' itemized deductions set forth on their New York income tax return for 1961 were overstated by $1,441.26 as computed by the Income Tax Bureau; that the Income Tax Bureau properly computed all of the taxpayers' itemized deductions, including employee's itemized business deductions, under subsection (c) of Section 635 of Article 22 of the Tax Law; that the taxpayers' New York taxable income for 1961 was $15,194.87.

(B) That, accordingly, the Notice of Deficiency imposing additional taxes and interest against the taxpayers is correct; that the amount set forth therein is due and owing together with additional interest and other statutory charges; that said Notice of Deficiency does not include any tax or other charge which could not have been lawfully demanded; that taxpayers' claim for refund was properly denied by the Income Tax Bureau; and that taxpayers' petition for redetermination and refund with respect to the Notice of Deficiency and claim for refund be and the same is hereby denied.

Dated: Albany, New York
November 19, 1969

STATE TAX COMMISSION

s/s Norman Gallman
President

s/s A. Bruce Manley
Commissioner

s/s Milton Koerner
Commissioner