

Income Tax Determinations
Hoge, Cecil C. A-2

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
CECIL C. HOGE
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1955 & 1956

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Lynn Horodowich, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24 day of September, 1969, she served the within Notice of Decision (or Determination) by ~~(certified)~~ mail upon Cecil C. Hoge ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Cecil C. Hoge 330 East 63rd Street, New York City and by depositing same enclosed in a postpaid properly addressed wrapper in a ~~(post office or)~~ official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this
24 thday of September, 1969
Grace E. Pritchard


Lynn Horodowich

To Mr. Rook

To be submitted to the State Tax Commission
for signature upon your approval.

(Cecil A. ...)

signed & dated 9/5/69



9/5/69 lmh

From Francis X. Boylan

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CECIL C. HOGE

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1955 & 1956

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State of New York
County of Albany

Lynn Horodowich, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of September, 1969, she served the within Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Cecil C. Hoge (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Philip Muldberg, 60 Park Place, Newark 2, New Jersey and by depositing same enclosed in a postpaid properly addressed wrapper in a (~~post office~~ official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

24th day of September, 1969

Grace E. Pritchard

Lynn M. Horodowich

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application of :

CECIL C. HOGE :

for Revision or Refund of Personal Income : DETERMINATION
Taxes under Article 16 of the Tax Law for
the Years 1955 and 1956 :

:

The State Tax Commission having assessed additional income taxes under Article 16 of the Tax Law against the above named taxpayer for the years 1955 and 1956, and the taxpayer having filed an application for revision or refund related to such additional assessments and such application having been denied, and a preliminary hearing having been held at the offices of the Department of Taxation and Finance at New York, New York, on June 15, 1961, and the taxpayer having been represented by Philip R. Muldberg, C.P.A. of Newark, New Jersey, and evidence having been introduced at that time, and the taxpayer having duly demanded a formal hearing, and a formal hearing having been scheduled at the offices of the Department, 80 Centre Street, New York, New York on May 11, 1964 before Francis X. Boylan, Hearing Officer, and the taxpayer having defaulted at that hearing, and the file having been duly examined and considered,

The State Tax Commission hereby finds that:

1. By notices of additional assessment B 558427 and B 558428, both dated March 3, 1959, the Department made assessments of additional taxes for the years 1955 and 1956 in the amounts of \$553.00 for the year 1955, and \$564.89 for the year 1956. As to the year 1955, the Department disallowed deductions taken for claimed alimony payments in the amount of \$5,200, and for a claimed uncollectible loan in the amount of \$1,200, and disallowed also an exemption taken as the head of a family in the amount of \$1500, to a total of additional taxable income in the amount of \$7,900. As to the year 1956, a

claimed deduction for alimony payments in the amount of \$5200 and a claimed exemption as a head of a family in the amount of \$1500 were disallowed as not established; and of the total amount claimed for medical expenses, \$1369.83 thereof was disallowed as in excess of the maximum amount lawfully allowable on the return of a single person.

By letter dated November 15, 1961, the Department revised the additional assessments to allow the amount of the claimed exemption as the head of a family in both years.

2. By two applications for revision or refund, both sworn to December 15, 1959, the taxpayer in effect had appealed from the original additional assessments stating that the alimony claim was supported by proof of a decree of divorce and by payments of at least the amount deducted; and that the deduction for the head of a family was warranted by reason of taxpayer's having maintained a home for his son, which the boy occupied on his visits home from a boarding school.

An affidavit sworn to the 15th day of December, 1959 was submitted with the petitions. In the affidavit, the taxpayer stated that he was divorced from his wife by a final decree of divorce granted in the Second Judicial District of the State of Nevada, December 24, 1954.

In the year 1955 and 1956, his (former) wife lived in a house owned by the taxpayer at Bellport, Long Island, which had been given to her by the taxpayer in accordance with the divorce decree, the affidavit further stated.

The affidavit further set forth specific information supporting adequately the conclusion that the taxpayer maintained a home for his son, and accordingly, as has been stated, the exemption claimed as the head of a family was allowed by letter dated November 15, 1961, and the additional assessments were modified to that extent.

3. At a preliminary hearing held June 15, 1961, the taxpayer's representative conceded that the deduction claimed for an uncollectible loan in the amount of \$1200 taken for the year 1955 and disallowed, could not be proved.

It was also conceded finally that the medical expenses claimed for the year 1956 in excess of the amount allowed were not lawfully allowable and that the related deduction was proper. An assertion earlier made that the medical expenses were partly for the care of the wife so as to be in lieu of alimony and allowable although in excess of the amount deductible on a return of a single individual, was not pursued, and it was not established that the payments were in part for the care of the wife.

The taxpayer's representative introduced an analysis of check stubs showing expenditures for the years 1955 and 1956, showing "cash" payments by checks made out in the name of the wife, mortgage payments made by the taxpayer on the Bellport house, real estate taxes paid on the house, salary paid to a maid for the wife, and certain miscellaneous bills assertedly contracted by the wife. His analysis of these payments for the two years was as follows:

| 1955 | |
|-------------------------------|-----------------|
| Cash (checks in name of wife) | \$2,526.12 |
| Mortgage payments | 986.70 |
| Real Estate Tax | 214.53 |
| Aldora Golphin (maid) | 1,171.75 |
| Miscellaneous (bills of wife) | <u>1,856.58</u> |
| | \$6,755.73 |

| 1956 | |
|-------------------------------|-----------------|
| Cash (checks in name of wife) | \$2,701.00 |
| Mortgage payments | 910.80 |
| Real Estate Tax | 361.08 |
| Aldora Golphin (maid) | 1,409.00 |
| Miscellaneous (bills of wife) | <u>3,539.11</u> |
| | \$8,920.99 |

Except that cancelled checks were available for the last three months of 1956, the related bills and vouchers had been lost, it was stated.

The first four items were adequately substantiated (and were allowable in lieu of alimony we are holding). As to the year 1956, these items alone exceeded the \$5200 claimed.

As to the last listed item, although it is likely that bills contracted by the wife did include some purchases that were for the son's use beneficially while he was in her custody, and the nature of the proof submitted did not preclude the possibility either, that the payments, put forth as payments of the wife's bills, included some payments of bills that were the taxpayer's own, and so not in lieu of alimony, it is highly probable that enough of the expenditures under this item to bring the total expenditures set forth to \$5200 in the year 1955 were for payments of bills for purchases for the wife's own beneficial use, and it is so found,

Upon the foregoing evidence, the State Tax Commission hereby DETERMINES:

A. Pursuant to Tax Law Section 360.17 (cf. also Tax Law Section 359.8), which allows the deduction of periodic payments by a husband to a divorced wife in discharge of an obligation to pay alimony imposed under a decree of divorce, whether the periodic payments are made at regular intervals or not, and pursuant to Regulation 252.12 (20 NYCRR 252.12) which permits the deduction of such payments made in lieu of alimony, and on the finding set forth in paragraph 3 herein, that amounts in excess of \$5200, hereby held allowable, were so paid in each year in lieu of alimony, the deductions originally taken in the returns in the amount of \$5200 for payments by way of alimony in each year are allowed.

The assessments are restated as follows:

1955

| | |
|---|---------------|
| Claimed uncollectible loan, not allowed; additional taxable income: | \$1,200.00 |
| Normal tax at 7 per cent..... | \$84.00 |
| Credit for overpayment of 1959 personal income tax..... | <u>-55.09</u> |
| | \$28.91 |

1956

| | |
|--|------------|
| Medical expenses in excess of the maximum amount deductible on return of a single individual; additional taxable income: | \$1,369.83 |
|--|------------|

| | |
|-------------------------------|---------|
| Normal tax at 7 per cent..... | \$95.89 |
|-------------------------------|---------|

These stated amounts of additional tax due are subject to interest which is fixed (pursuant to provisions of Tax Law §379.2 and 377.3) at the reduced rate of 6% per annum from March 3, 1959, the date of the original additional assessments to the date of payment, provided that payment is made not later than thirty days after the date of mailing of notice of the Determination herein; but if not then paid, the said amounts of additional tax due are subject instead to 6% interest from March 3, 1959 to the date of mailing of notice of this Determination, and to a penalty of 5% on these said amounts of additional tax due, and to further interest at the rate of 1% per month on the said amounts from the said date of mailing of notice of this Determination until the date of payment.

Dated, Albany, New York

September 19 ,1969.

STATE TAX COMMISSION

Isroman Gallman
PRESIDENT

Abner Maulay
COMMISSIONER

Milton Krerner
COMMISSIONER