

BUREAU OF LAW

MEMORANDUM

Income Tax Determination.
A - Z
Ramsay, Eugene
and Rose

TO: State Tax Commission
FROM: Solomon Sles, Hearing Officer
SUBJECT: EUGENE RAMSAY AND ROSE RAMSAY

1954 Assessment TF-285101 - Penalty \$1,000
1955 Assessment TF-285102 - Penalty \$1,000

Article 16

The issue involves penalty assessments for failure to furnish information and file IT 115's in connection with Federal changes for the years 1954 and 1955.

The taxpayers filed joint Federal income tax returns for 1954 and 1955. They also filed New York State resident income tax returns for said years reporting similar income. The State return for 1954 is joint; the 1955 return is not available. The taxpayers filed a waiver with IRS extending the time within which to issue assessments for the years 1954 and 1955. On February 13, 1959, the IRS issued assessments against the taxpayers imposing additional taxes, penalties and interest in the amounts of \$2,262.86 and \$4,582.18 for the respective years 1954 and 1955. The taxpayers claim that the aforementioned Federal determinations became final in June, 1959. The taxpayers failed to file notices of changes in their Federal taxable income for said years as required by Section 367(2) of the Tax Law.

On February 10, 1961, a letter was mailed to the taxpayer, Eugene Ramsay, requiring him to file IT 115's (notices of Federal changes) for the years 1954 and 1955 and to furnish information with respect thereto. No reply was received. It is to be noted that no similar letter was mailed to Rose Ramsay. On May 1, 1962, notices of additional assessments were made against the taxpayers, Eugene Ramsay and Rose Ramsay, imposing penalties of \$1,000 for each of the years 1954 and 1955 (Assessment Nos. TF-285101 and TF-285102, respectively) for failure to furnish information as requested in letter dated February 10, 1961 regarding Federal changes to their income tax returns for the aforementioned years. The taxpayers filed timely applications for revision or refund of said assessments.

The representative for the taxpayers was requested to submit copies of the Federal audit reports for the years in issue. Although he wrote that he would endeavor to submit such reports, he failed to do so. At the hearing, the representative for the taxpayers had in his possession the Federal audit reports with respect to the Federal changes made against the taxpayers for the years 1954 and 1955. He refused to have the aforementioned reports received and marked in evidence and

further refused to submit copies thereof. He contends that the taxpayers executed waivers extending the Statute of Limitations for Federal tax purposes only; that the State could not have issued assessments on May 1, 1962 since the time to issue assessments against the taxpayers had expired; that the assessments were erroneous and invalid as against the taxpayer, Rose Ramsay, since no letter was sent to her requesting information and that she could not, therefore, be penalized for failure to furnish such information.

Section 367(2) of the Tax Law provides, in part, that if the amount of taxable income for any year of any taxpayer as returned to the U. S. Treasury Department is changed or corrected, such taxpayer shall report such change or corrected taxable income within 90 days after the final determination of such change or correction or as required by the Tax Commission and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended Federal return is also required to file within 90 days thereafter an amended State return with the Tax Commission which shall contain such information as it shall require.

Section 373(1) of the Tax Law provides, in part, that:

" . . . Where no return is filed or in the case of a wilfully false or fraudulent return with intent to evade the tax or if a taxpayer shall fail to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by section three hundred sixty-seven of this chapter, the amount of tax due may be assessed and collected at any time. . . ." (Emphasis supplied)

Section 376(4) of the Tax Law provides, in part, as follows:

"4. Any individual, corporation or partnership, who, without fraudulent intent, shall fail to pay, or to deduct or withhold and pay any tax, or to make, render, sign or certify any return or declaration of estimated income, or to supply any information, within the time required by or under the provisions of this article, shall be liable to a penalty of not more than one thousand dollars to be imposed, assessed and collected . . . in the same manner as provided . . . with regard to taxes. . . ." (Emphasis supplied)

I am of the opinion that there is no provision in the Tax Law which excuses a taxpayer from filing notice of Federal changes as required by Section 367(2) of the Tax Law; that the failure to file

such notice of Federal changes tolls the Statute of Limitations with respect to the issuance of an assessment based upon such Federal changes in accordance with Section 373(1) of the Tax Law; that the time to issue assessments is still open; that the fact that taxpayers executed waivers extending the statutory time limit of the Internal Revenue Service to issue assessments has no bearing on the statutory requirement to file notice of such corrected Federal changes; that in view of the persistent refusal of the taxpayer, Eugene Ramsay to furnish information, after repeated requests to do so, the penalty assessments, as against him, should be sustained.

I am of the further opinion, however, that the assessments should be amended so as to delete the name of Rose Ramsay therefrom since she was never requested to supply information and therefore should not be charged with having failed or refused to supply such information and penalized therefor.

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

SOLOMON SIES
Hearing Officer

SS:rlp

Enc.

April 17, 1969 (Sent to Comm. 5/16/69)

/s/
JS

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS
OF
EUGENE RAMSAY AND ROSE RAMSAY
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE :
TAX LAW FOR THE YEARS 1954 AND 1955 :

The taxpayers herein having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1954 and 1955 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on November 28, 1968 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, and the taxpayers having been represented by Max M. Saxon, CPA, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed joint Federal income tax returns for the years 1954 and 1955; that they also filed New York State resident income tax returns for said years reporting similar income; that the taxpayers executed and filed a waiver with the Internal Revenue Service extending the time within which to issue Federal assessments for the years 1954 and 1955; that on February 13, 1959, the Internal Revenue Service issued assessments against the taxpayers, Eugene Ramsay and Rose Ramsay, imposing additional taxes, penalties and interest in the amounts of \$2,262.86 and \$4,582.18 for the respective years 1954 and 1955 changing or correcting their Federal taxable income for said years; that the taxpayers claim that the aforementioned Federal determinations became final in June, 1959.

(2) That the taxpayers failed to file with the New York State Department of Taxation and Finance notice of changes in their Federal taxable income for the years 1954 and 1955 as required by section 367(2) of the Tax Law which provides, in part, as follows:

"(2) If the amount of taxable income for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in taxable income, such taxpayer shall report such change or corrected taxable income, or the results of such renegotiation, within ninety days after the final determination of such change or correction or renegotiation, or as required by the tax commission, and shall concede the accuracy of such determination or state wherein it is erroneous."

(3) That on February 10, 1961, a letter was mailed to the taxpayer, Eugene Ramsay, requiring him to file IT 115's (notice of Federal changes) for the years 1954 and 1955 and to furnish information with respect thereto; that no reply was received to said letter.

(4) That no similar letter referred to in Finding (3) above was mailed to the taxpayer, Rose Ramsay.

(5) That on May 1, 1962, notices of additional assessments were made against the taxpayers, Eugene Ramsay and Rose Ramsay, his wife, imposing penalties of \$1,000 for each of the years, 1954 and 1955 (Assessment Nos. TF-285101 and TF-285102, respectively) for failure to furnish information as requested in the aforementioned letter dated February 10, 1961, more fully set forth in Finding (3) above, regarding Federal changes to their income tax returns for the years 1954 and 1955; that the taxpayers filed timely applications for revision or refund of said assessments.

(6) That the taxpayers did not appear at the hearing but their representative appeared and testified at said hearing; that

the representative was requested to submit copies of the Federal audit reports for the years in issue; that although he wrote that he would endeavor to submit such report, he failed to do so; that at the hearing, the representative for the taxpayers had in his possession the Federal audit reports with respect to the Federal changes made against the taxpayers for the years 1954 and 1955; that he refused to have the aforementioned Federal audit reports received and marked in evidence and further refused to submit copies thereof.

(7) That section 373(1) of the Tax Law provides, in part, as follows:

" . . . Where no return is filed or in the case of a wilfully false or fraudulent return with intent to evade the tax or if a taxpayer shall fail to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by section three hundred sixty-seven of this chapter, the amount of tax due may be assessed and collected at any time. . . ." (Emphasis supplied)

(8) That subdivision (4) of section 376 of the Tax Law provides, in part, as follows:

"4. Any individual, corporation or partnership, who, without fraudulent intent, shall fail to pay, or to deduct or withhold and pay any tax, or to make, render, sign or certify any return or declaration of estimated income, or to supply any information, within the time required by or under the provisions of this article, shall be liable to a penalty of not more than one thousand dollars to be imposed, assessed and collected . . . in the same manner as provided . . . with regard to taxes. . . ." (Emphasis supplied)

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

DETERMINES:

(A) That the penalty assessments issued against the taxpayer, Rose Ramsay, for failure to furnish information were improper since she was never requested to furnish such information.

(B) That the taxpayers were required in accordance with the provisions of section 367(2) of the Tax Law to report the Federal changes or corrections in taxable income for the years 1954 and 1955 within 90 days from the date of the final determination of such changes or corrections, namely 90 days from either February 13, 1959 or June, 1959 and failed to do so; that the fact that waivers were executed for the Internal Revenue Service and not for the State Tax Commission has no bearing on the statutory requirement to file notice of final determination of corrected Federal changes.

(C) That the penalty assessments issued against the taxpayer, Eugene Ramsay, were properly issued in accordance with section 376(4) of the Tax Law since said taxpayer failed and refused to furnish information and file IT 115's and copies of Federal audit reports with respect to Federal audit changes for the years 1954 and 1955, although repeatedly requested to do so.

(D) That the penalty assessments were timely issued against the taxpayer, Eugene Ramsay, in accordance with the provisions of section 373(1) of the Tax Law, as more fully set forth in Finding (7) above; that since the taxpayers failed to report a change or correction by the Commissioner of Internal Revenue for the years 1954 and 1955, the amount of tax due for said years may be assessed and collected at any time.

(E) That the penalty assessments for the years 1954 and 1955 (Assessment Nos. TF-285101 and TF-285102) are hereby amended by deleting therefrom the name of the taxpayer, Rose Ramsay; that said assessments except as herein modified are correct; that

the applications of the taxpayers for revision or refund filed with respect thereto, except as herein modified, be and the same are hereby denied.

Dated: Albany, New York this 17th day of July , 1969.

STATE TAX COMMISSION

Norman Gelman

President

Abner Manley

Commissioner

Milton Kerner

Commissioner