

## BUREAU OF LAW

*Income Tax Determinations*

## MEMORANDUM

A-2

*Schiavo, Joseph*

TO: State Tax Commission

FROM: Vincent P. Malinsuk, Hearing Officer

SUBJECT: Joseph Schiavo - Application for Revision  
or Refund of Personal Income Tax Under  
Article 16 of the Tax Law for the Year 1959

A hearing on the above matter was held before me at 80 Centre Street, New York, N. Y. on September 21, 1967.

The question at issue is the timeliness of filing application for revision or refund.

The Income Tax Bureau on September 19, 1961 issued Assessment No. YA 91305 in the amount of \$633.67 based upon field audit showing, income from partnership understated, \$151.76; deduction for excludible sick pay overstated, \$8,701.29; and decrease in medical deduction by reason of increase in income, \$451.64.

Application for revision verified September 23, 1962, and received by the State Tax Commission subsequent thereto, was denied by letter dated February 10, 1963 on the ground that the application had been made after the expiration of the one year from the date of recomputation provided in Section 374 of the Tax Law.

In his application for revision the taxpayer stated that no final determination had been reached on Federal audit. After several inquiries were addressed to the taxpayer he endorsed on a Department letter of September 21, 1964 that his adjusted Federal tax was \$685.19 and enclosed one page of Federal Form 1009. The Federal audit report dated April 9, 1964 showed income increased by \$11,233.50 including sick pay exclusion disallowance of \$9,801.25 or slightly more than the State disallowance, but allowed deductions of \$8,118 including \$8,000 withdrawn by the taxpayer from his business when there was actually no surplus, and erroneously reported as income. However, in addition to late filing of the application for revision taxpayer also failed to report Federal changes within the 90 days required by Tax Law Section 107(2). The application for refund based upon the Federal report of changes is, therefore, untimely. (20 NYCRR, Section 270.21(3))

Based upon the foregoing, I recommend that the determination of the State Tax Commission in the above matter denying the application for revision or refund be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX  
Hearing Officer

VPM:de/lo

Enc.

December 16, 1968

OK MS  
Sent to Commission 1/22/69

**STATE OF NEW YORK  
STATE TAX COMMISSION**

.....  
**IN THE MATTER OF THE APPLICATION**

**OF**

**JOSEPH SCHIARO**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAX UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEAR 1959**  
.....

Joseph Schiavo having filed an application for revision or refund of personal income tax assessed under Article 16 of the Tax Law for the year 1959 and a hearing having been held September 21, 1967, at 80 Centre Street, New York, N. Y. before Vincent P. Malinoux, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That on September 19, 1961, the Income Tax Bureau issued Assessment No. PA 91305 in the amount of \$632.67 based upon field audit showing income from partnership understated, \$331.70; deduction for allowable sick pay overstated, \$8,701.29; and decrease in medical deduction by reason of increase in income, \$431.64.
- (2) That application for revision verified September 23, 1962 and received by the State Tax Commission subsequent thereto was denied by letter dated February 10, 1963 on the ground that the application had been made after the expiration of the one year from the time of recognition provided in Section 374 of the Tax Law.
- (3) That in his application for revision the taxpayer stated that no final determination had been reached on Federal audit and that after several inquiries addressed to the taxpayer

the said taxpayer enclosed on a Department letter of September 21, 1964 that his adjusted Federal tax was \$883.19 and enclosed one page of Federal Form 1099.

(4) That the Federal audit report dated April 9, 1964 showed income increased by sick pay exclusion of \$9,801.23, contributions \$330, medical expenses \$77.03, auto and entertain-ment \$1,010 against which there was deducted the original amount reported of \$4,503.10 for a total increase of \$11,213.30.

(5) That the Federal also allowed further deductions of \$113.81 for real estate taxes and \$8,000 withdrawn from the business by taxpayer and erroneously reported by him as income when in fact there being no surplus the amount drawn was a capital withdrawal and not reportable as income, leaving a Federal net increase of \$3,114.49.

(6) That the Federal changes were not reported as required by Tax Law Section 307(2) until November 30, 1964.

Based upon the foregoing findings the State Tax Commission hereby

**DETERMINES:**

(A) That the application for revision or refund of Assessment No. TA 91305 is untimely since it was not filed within one year as required by Section 374 of the Tax Law.

(B) That the application for refund based upon the Federal audit report is untimely since the report of Federal changes was not reported within 90 days required by Section 307(2) of the Tax Law (20 NYCRR, Section 270.21(4)).

(C) That the application for revision or refund is hereby dismissed.

DATED: Albany, New York this 24th day of January, 1969.

**STATE TAX COMMISSION**

/s/

**JOSEPH H. MURPHY**

**President**

/s/

**A. BRUCE MANLEY**

**Commissioner**

**Commissioner**