Income Tax Determin,
Steinberg, Harold A-Z

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of HAROLD STEINBERG For a Redetermination of a Deficiency or a Refund of INCOME Taxes under Article(s) 16 of the Tax Law for the year(s) 1955	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

PATRICIA WHITMAN , being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 3rd day of July , 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Harold Steinberg the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Harold Steinberg, 93 Remsen Street, Brooklyn, NY

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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

Sworn to before me this
3rd day of July , 1969.

Patricia Whitman

Grace E. Pritchard

To Mr. Edward Rook

Prepared determination to be submitted to State Tax Commission.

5/12/69
(F M)

From Francis X. Boylan

L 9 (12-64)

Income Tax Determin.
A-Z
Steinberg, Harold

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and MacDuff

FROM: Francis X. Boylan

SUBJECT: Harold Steinberg, Article 16, 1955

The taxpayer failed to appear, and defaulted at the hearing scheduled before me on January 30, 1964. The file is submitted herewith.

The proposed determination upholds the additional assessment for 1955 on the grounds that the record shows that the taxpayer failed to establish that the payments he made to his wife, which he claimed were alimony, were deductible as such at that time, since he failed to establish that the payments were made subsequent to a decree of divorce or separation. The 1955 payments clearly were not subsequent to the decree of divorce which was issued in 1956, and probably there never was any decree of separation. But while admissions by the taxpayer to that effect seem to be implicit in the record, no such admission in terms was reported clearly, and consequently the affirmance of the assessment is put rather on the grounds that the taxpayer failed to establish that there was a decree in 1955.

The facts are these: Originally additional assessments were made for the year 1956 as well as for 1955 on the grounds that the payments claimed were not shown to have been made subsequent to a decree of divorce or separation or under a separation agreement and so did not constitute alimony. When the taxpayer exhibited his interlocutory decree of divorce dated March, 1956, making reference to a separation agreement, and later exhibited a separation agreement made December 15, 1955, the assessment for 1956 was cancelled. This was done pursuant to provision of Tax Law § 359.2r8, which as amended provided that payments of alimony to a wife were in effect deductible by the husband, beginning with the tax year 1956, if they were made under a separation agreement. Prior to such amendment effective with the tax year 1956, it was necessary that the payments have been made subsequent to a decree of divorce or separation and also that they were made in discharge of an obligation imposed by such decree or by an instrument incident to such divorce or separation. The 1955 assessment therefore was not remitted because no decree of an earlier date than 1956 was ever established.

The taxpayer and his wife separated in 1954, and apparently he made payments to her for her support after that time. It is not clear whether he had an earlier agreement providing for her support prior to the separation agreement of December 15, 1955 or whether there was an order for temporary alimony extant in 1955, as an incident of the divorce proceeding. Presumably there was one or the other, and possibly both, that is to say, an order of temporary alimony which reflected an earlier agreement of some kind between the parties. However, he evidently did not ever have a decree of separation. On this point he did state in letters that he was "legally separated" since 1954, and again that there were enough legal proceedings going on to make him conclude that he must have been legally separated. On the other hand, however, at one point in the correspondence, he acknowledged that he knew that what he had to prove was that there was "a legal separation" prior to the 1956 divorce decree, and that he needed the "documents." He also was reported to have admitted finally that the Department's decision as to 1955 was correct, and that he would pay the assessment. Consequently, it is clear enough that there was no decree of separation at the time of the payments in 1955. The determination, as has been said, has been put on the grounds that he failed to establish that there was such a decree as of 1955.

By Chapter 360 of the Laws of 1955, Tax Law § 359.2-b was amended to provide that payments of alimony were in effect deductible by a husband if the payments were pursuant to an agreement of separation. This change, although perhaps remedial, by the express provisions of the chapter had application to returns for a tax year beginning in 1956, and consequently did not apply to the year 1955.

Prior to the amendment by Chapter 360, it was provided, in the case of a wife who was divorced or legally separated under a decree of divorce or separate maintenance, that periodic payments, not including payments for the support of children, were income to her and deductible by the husband if received "subsequent" to a decree of divorce or separation, and if the obligation was imposed by such decree or by a written instrument incident to such a divorce or separation. Consequently, before the amendment making a separation agreement enough to support alimony for income tax purposes, it was necessary that the payments claimed were made "subsequent" to a decree, as a requirement distinct from the further requirement that the obligation was one imposed under the decree or under an instrument incident to the divorce or separation.

Since the taxpayer did not have a decree of divorce in 1955 and evidently did not have a decree of separation at any time, the assessment as to 1955 was correct. (Determination Robert B. Shirey, 1964, Memorandum May 29, 1964)

An agreement of separation, even as of 1955, of course constituted a valid and legal separation. Such an agreement, however, even if filed with the court was quite distinct from a "decree" of separation. (CPA 1161, et seq., Rule 283, Rules of Civil Practice) Civil Practice Rule 283 provided that no judgment of separation could be entered solely on consent. Some sort of inquest however informal, was therefore necessary. (Aminoff v. Aminoff, (1955) 286 App. Div. 514) Consequently, although it is quite possible that the taxpayer did have another agreement of separation prior to that dated December 15, 1955, no formalities of such agreement, and no filing of any agreement would have constituted the separation agreement in itself as equivalently a "decree" of separation.

The State Tax Commission was empowered to make the additional assessment, and to put the taxpayer to his proof that he had a lawful basis for characterizing the payments to his wife as deductible alimony. (Tax Law § 374, subdivisions 1 and 2) As to the year 1955, the taxpayer had to show that the payments were made pursuant to a decree, and he failed to meet this burden.

For these reasons, it is my recommendation that the determination be substantially in the form of the proposed determination submitted herewith.

/s/ FRANCIS X. BOYLAN
Hearing Officer

FXB:el
Enc.

April 1, 1965

/s/ M. SCHAPIRO
Approved

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

HAROLD STEINBERG

For revision or refund of income taxes under Article 16 of Tax Law, for the year 1955

The State Tax Commission having assessed additional income taxes under Article 16 of the Tax Law against the above-named taxpayer on his return for 1955; and the taxpayer having filed an application for revision or refund related to such additional assessment, and such application having been denied; and a formal hearing having been scheduled, pursuant to demand therefor, on January 30, 1964 at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Francis X. Boylan, Hearing Officer, and the taxpayer having defaulted and failed to appear at such hearing; and the file having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) The Department of Taxation and Finance by notice of additional assessment B563366 dated March 9, 1959 disallowed a deduction of $1680.00 taken by the taxpayer for the year 1955 as alimony paid to his wife, on the grounds that the taxpayer failed to substantiate that such payments constituted alimony that was deductible pursuant to provisions of law.

(2) Taxpayer, by application for revision or refund related to such additional assessment, challenged this ruling, and submitted a photocopy of an interlocutory decree of divorce, issued March 23, 1956.

The said decree indicated that an interlocutory decree of divorce was granted to Rebecca Steinberg, then the taxpayer's wife, against him to become final three months after its date, unless otherwise ordered by the court. The decree further made reference to a certain separation agreement, such separation agreement having been made December 15, 1955, and provided that the defendant taxpayer pay to his wife the sum of $80.00 twice a month for the support of their child, and $70.00 twice a month as alimony. The payments claimed by the taxpayer to have been deductible in 1955, in the amount of $1680.00, represented the payments stated to have been made by him to his wife, and did not include any payments made for the support of the child.

(3) The taxpayer reportedly lived separate from his wife and child since 1954 and made payments at the rate of $70.00 a month for the benefit of the wife, in addition to payments for the support of the child. The record failed to establish however that taxpayer at any time made these payments pursuant to a decree of separation, or that there ever was a decree of separation between taxpayer and his wife.

(4) The payments made by the taxpayer in 1955 to his wife clearly were not subsequent to the 1956 divorce decree and, as it is found, were not shown to have been paid subsequent to any earlier decree of legal separation either.

Upon the foregoing evidence the State Tax Commission hereby

DETERMINES:

(A) That pursuant to provision of the then Tax Law § 359.2r8 as of 1955, only payments made by a husband to his

wife, which were subsequent to a decree of divorce or separation, (and made pursuant to such a decree, or to an agreement incident to such a divorce or separation,) were deductible from gross income for income tax purposes, and the deduction by taxpayer in his return for 1955 of payments made in 1955 to his wife, which were not made subsequent to any decree, was improper; and the disallowance of such deduction was lawful and correct.

(B) That accordingly, the additional assessment for the year 1955, described in paragraph 1 hereof, dated March 9, 1959, assessing additional taxes in the amount of $90.14 as of the said date thereof, is affirmed, subject to interest, and to penalties if any.

And it is so ORDERED.

Dated: Albany, New York this 24th day of June, 1969.

STATE TAX COMMISSION

President

Commissioner

Commissioner