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TAX Personal Income
 ART. 16 SECS. 374
373.1
 KEY WORDS 373.6
"if... present" (373.1)
"state. assessment"
 CROSS REFS. Illnesses
373.6

STATE OF NEW YORK
 STATE TAX COMMISSION

 IN THE MATTER OF THE APPLICATION
 OF
 HAROLD OLIAN

FOR REVISION OR REFUND OF PERSONAL
 INCOME TAXES UNDER ARTICLE 16 OF THE
 TAX LAW FOR THE YEAR 1957

CASE LAW CITATIONS

Campbell v. S. Ignorant
317 AD 2d 342
Burlington Truck L. v. U.S.
 REMARKS (1962) 9 L. ed. 2d
207
DETERMINATION

See Memo
This Determination
J. B. 11/6/69
Low Bureau files

Harold Olian, the taxpayer, having filed an application for revision or refund of additional personal income taxes assessed for the year 1957, and such application having been denied, and the taxpayer having waived formal hearing and having submitted his case on the record, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notice of additional assessment No. 2-813252, dated September 30, 1960, the State Tax Commission revised the return made by the taxpayer. The total gross income reported by the taxpayer in his return in the amount of \$9,814.81 was accepted, but a standard deduction of \$1,000.00 was allowed instead of the itemized deductions claimed by taxpayer in his return. An allowance of \$2,000.00 for personal exemptions in effect disallowed a further amount of \$400.00 claimed by taxpayer in the return as an exemption for his mother as a dependent. The resultant net income in the amount of \$5,914.81 was subjected to normal tax in the amount of \$208.74, and after crediting normal tax paid with the return in the amount of \$38.24, additional normal tax due in the amount of \$167.30 was assessed.

(2) Taxpayer in his return had taken as an itemized deduction for family medical expense a single item in the amount of \$1,400.00, and a further item of medical expense in the amount of \$35.00 for an

ophthalmologist's fee; but by way of "other deductions" (Item 31d) he further listed certain expenses which included amounts for these items of medical expense, totaling \$1,453.00: Blue Cross, orthopedic shoes and glasses, dentist, drugs and prescriptions, vitamins and household drugs, and medical travel.

In his return taxpayer had taken a total personal exemption in the amount of \$3,300.00 reporting his mother, aged over 65, as a dependent.

(3) Before the additional assessment was made the Department by letter dated May 2, 1960 had asked the taxpayer to submit an itemized list of all medical expenses incurred and the amounts paid, and to indicate the expenses that could be substantiated by bills, receipts or cancelled checks, and it further asked for a report on any amount received from accident, health or hospitalization insurance; this letter had gone unanswered at the time the additional assessment was made.

(4) On receipt of the notice of additional assessment, the taxpayer by letter dated October 4, 1960 protested the additional assessment and requested form IT-113 (application for revision or refund). This form, verified April 16, 1962, was thereafter filed with the Department, more than two years after the date of the return (April 1958) and more than one year after the date of the additional assessment of September 30, 1960, and so was not filed within the time limitations set by Tax Law section 374. The filed form IT-113 was accompanied by a letter, dated April 16, 1962 in which the taxpayer undertook to explain the deductions taken.

With reference to the \$1,400.00 figure for family medical expense, the letter stated only that his wife had had a hysterectomy, requiring weekly and bi-weekly treatments, and that his son had

chronic upper respiratory illness and slight anemia. No report was made of any payments under health insurance policies, as had been requested.

The letter asserted that the taxpayer had not more than half the cost of support of his mother, claimed as a dependent, and listed individual claimed payments by check to a total of \$788.00.

(5) It is found that the claimed item of medical expense in the amount of \$1,400.00 was not adequately substantiated on the record.

(6) It is found that the exemption claimed by the taxpayer for the support of his mother is adequately substantiated and is allowable.

Upon the foregoing facts and findings and all the evidence herein, the State Tax Commission hereby,

DETERMINES:

(A) That pursuant to provisions of Tax Law sections 372 and 374, which authorize the restatement of an assessment made, the taxes assessed by the notice of additional assessment set forth in paragraph 1 hereof, are restated as follows:

Total gross income	89,814.81
Deductions allowed	<u>3,550.31</u>
Net income	86,264.50
Personal exemptions	<u>3,300.00</u>
Net income	82,964.50
First \$1,000 at 2%	\$20.00
\$1,964.50 at 3%	<u>58.94</u>
Normal tax due	\$78.94
Less normal tax paid	<u>38.24</u>
ADDITIONAL NORMAL TAX DUE	640.70

The deductions above stated include \$1,390.27 in allowable medical expenses relative to income, pursuant to Tax Law section 360.15.

Pursuant to provision of Tax Law section 370.2, interest (as provided for in Tax Law section 376) is to be charged, beginning 30 days after service of notice of this determination.

Dated at Albany, New York,
this 24th day of June
1968.

STATE TAX COMMISSION

JOSEPH H. MURPHY
President

/S/

A. BRUCE MANLEY
Commissioner

MILTON KOERNER
Commissioner