

TAX PERSONAL INCOME

ART. 16 SEC. 374

REASON: Federal Changes;  
Timeliness of Claim For  
N.Y.S. Refund, Based Thereon.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application :  
of the :  
ESTATE OF BENJAMIN MONDSHEIN :  
For refund of Personal Income Taxes :  
under Article 16 of the Tax Law for :  
the Year 1957 :

CASE NO. 107-1073

REMAND DETERMINATION

Mrs. Lillian Mondshein, as executrix of the Estate of Benjamin Mondshein has filed a Demand for Hearing in the matter of an application for refund of Personal Income Taxes for the year 1957. A formal hearing was held before Lawrence A. Newman, Hearing Officer, to determine the timeliness of her application for refund. The applicant was represented by Jerome J. Feldman, C.P.A., assisted by Harold Mondshein, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel.)

FINDINGS OF FACT:

(1) On October 22, 1965, the United States Internal Revenue Service notified the applicant that as a result of an examination of the income tax return of Benjamin Mondshein (deceased) and Lillian Mondshein, his widow, for the year 1957, an overassessment was determined and a refund would be made of the overpayment. The applicant had indicated agreement to the conclusions shown on the report at the time of the examination.

(2) On August 26, 1966, the applicant filed form IT-115, Notice of Change in Taxable Income by the United States Treasury Department with the Department of Taxation and Finance.

The applicant claimed that a refund was due of New York Personal Income and Unincorporated Business Taxes in the sum of \$2614.75.

(3) On September 27, 1966, the taxpayer filed an additional

claim for refund of taxes with the United States Internal Revenue Service for the year 1957.

The claim alleged that the "Revenue Agent didn't give us credit under Section 481 of the I.R.S. Code." This statement related to the notice of examination of the year 1957, dated October 22, 1965.

(4) On November 2, 1967, the United States Internal Revenue Service disallowed this claim in full because the taxpayer had not filed her claim within the three year period specified in Section 6511(a) of the Internal Revenue Code of 1954.

The taxpayers protested the proposed action, and on July 12, 1968, the Regional Commission of the Internal Revenue Service notified the taxpayers that the Appellate Branch had affirmed the denial of their claim for refund of November 2, 1967 on the same grounds.

(5) The applicant has not pleaded or proved that any protest was made of the notice of examination dated October 22, 1965.

In the absence of any appeal by the applicant to the notice of October 22, 1965, the action by the United States Internal Revenue Service constituted a final and irrevocable determination of Federal tax liability.

(6) The taxpayer filed the notice of change in taxable income more than 90 days after a final and irrevocable determination of Federal tax liability.

DETERMINATION:

A. The claimant received a notice from the Internal Revenue Service of a final determination of a change in Federal net income for the year 1957.

B. The said final determination found an overassessment of Federal income taxes for the year 1957.

C. The claimant filed a notice of change in Federal taxable income with the Department of Taxation and Finance, but the said

notice was filed in excess of 90 days after the notice of the Federal final determination.

D. The said notice of final determination alleged an overassessment of New York Personal Income and Unincorporated Business Tax, constituting a claim for refund of the alleged overassessment.

E. The aforesaid claim for refund was not timely filed.

F. The aforesaid claim for refund is hereby denied.

Dated: Albany, New York, this 23<sup>rd</sup> day of October 19 69.

STATE TAX COMMISSION

*Rosmar Gallman*

PRESIDENT

*Baruch Hawley*

COMMISSIONER

*Milton Kwein*

COMMISSIONER

