

claimed deduction for alimony payments in the amount of \$5200 and a claimed exemption as a head of a family in the amount of \$1500 were disallowed as not established; and of the total amount claimed for medical expenses, \$1369.83 thereof was disallowed as in excess of the maximum amount lawfully allowable on the return of a single person.

By letter dated November 15, 1961, the Department revised the additional assessments to allow the amount of the claimed exemption as the head of a family in both years.

2. By two applications for revision or refund, both sworn to December 15, 1959, the taxpayer in effect had appealed from the original additional assessments stating that the alimony claim was supported by proof of a decree of divorce and by payments of at least the amount deducted; and that the deduction for the head of a family was warranted by reason of taxpayer's having maintained a home for his son, which the boy occupied on his visits home from a boarding school.

An affidavit sworn to the 15th day of December, 1959 was submitted with the petitions. In the affidavit, the taxpayer stated that he was divorced from his wife by a final decree of divorce granted in the Second Judicial District of the State of Nevada, December 24, 1954.

In the year 1955 and 1956, his (former) wife lived in a house owned by the taxpayer at Bellport, Long Island, which had been given to her by the taxpayer in accordance with the divorce decree, the affidavit further stated.

The affidavit further set forth specific information supporting adequately the conclusion that the taxpayer maintained a home for his son, and accordingly, as has been stated, the exemption claimed as the head of a family was allowed by letter dated November 15, 1961, and the additional assessments were modified to that extent.

3. At a preliminary hearing held June 15, 1961, the taxpayer's representative conceded that the deduction claimed for an uncollectible loan in the amount of \$1200 taken for the year 1955 and disallowed, could not be proved.

It was also conceded finally that the medical expenses claimed for the year 1956 in excess of the amount allowed were not lawfully allowable and that the related deduction was proper. An assertion earlier made that the medical expenses were partly for the care of the wife so as to be in lieu of alimony and allowable although in excess of the amount deductible on a return of a single individual, was not pursued, and it was not established that the payments were in part for the care of the wife.

The taxpayer's representative introduced an analysis of check stubs showing expenditures for the years 1955 and 1956, showing "cash" payments by checks made out in the name of the wife, mortgage payments made by the taxpayer on the Bellport house, real estate taxes paid on the house, salary paid to a maid for the wife, and certain miscellaneous bills assertedly contracted by the wife. His analysis of these payments for the two years was as follows:

1955	
Cash (checks in name of wife)	\$2,526.12
Mortgage payments	986.70
Real Estate Tax	214.53
Aldora Golphin (maid)	1,171.75
Miscellaneous (bills of wife)	1,856.58
	<u>\$6,755.73</u>

1956	
Cash (checks in name of wife)	\$2,701.00
Mortgage payments	910.80
Real Estate Tax	361.08
Aldora Golphin (maid)	1,409.00
Miscellaneous (bills of wife)	3,539.11
	<u>\$8,920.99</u>

Except that cancelled checks were available for the last three months of 1956, the related bills and vouchers had been lost, it was stated.

The first four items were adequately substantiated (and were allowable in lieu of alimony we are holding). As to the year 1956, these items alone exceeded the \$5200 claimed.

As to the last listed item, although it is likely that bills contracted by the wife did include some purchases that were for the son's use beneficially while he was in her custody, and the nature of the proof submitted did not preclude the possibility either, that the payments, put forth as payments of the wife's bills, included some payments of bills that were the taxpayer's own, and so not in lieu of alimony, it is highly probable that enough of the expenditures under this item to bring the total expenditures set forth to \$5200 in the year 1955 were for payments of bills for purchases for the wife's own beneficial use, and it is so found,

Upon the foregoing evidence, the State Tax Commission hereby
DETERMINES:

A. Pursuant to Tax Law Section 360.17 (cf. also Tax Law Section 359.8), which allows the deduction of periodic payments by a husband to a divorced wife in discharge of an obligation to pay alimony imposed under a decree of divorce, whether the periodic payments are made at regular intervals or not, and pursuant to Regulation 252.12 (20 NYCRR 252.12) which permits the deduction of such payments made in lieu of alimony, and on the finding set forth in paragraph 3 herein, that amounts in excess of \$5200, hereby held allowable, were so paid in each year in lieu of alimony, the deductions originally taken in the returns in the amount of \$5200 for payments by way of alimony in each year are allowed.

The assessments are restated as follows:

1955

Claimed uncollectible loan, not allowed; additional taxable income:	\$1,200.00
Normal tax at 7 per cent.....	\$84.00
Credit for overpayment of 1959 personal income tax.....	<u>-55.09</u>
	\$28.91

1956

Medical expenses in excess of the maximum amount deductible on return of a single individual; additional taxable income:	\$1,369.83
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Normal tax at 7 per cent.....	\$95.89
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These stated amounts of additional tax due are subject to interest which is fixed (pursuant to provisions of Tax Law §379.2 and 377.3) at the reduced rate of 6% per annum from March 3, 1959, the date of the original additional assessments to the date of payment, provided that payment is made not later than thirty days after the date of mailing of notice of the Determination herein; but if not then paid, the said amounts of additional tax due are subject instead to 6% interest from March 3, 1959 to the date of mailing of notice of this Determination, and to a penalty of 5% on these said amounts of additional tax due, and to further interest at the rate of 1% per month on the said amounts from the said date of mailing of notice of this Determination until the date of payment.

Dated, Albany, New York

September 19 ,1969.

STATE TAX COMMISSION

Norman Gallman

 PRESIDENT

Abner Mauler

 COMMISSIONER

Milton Kremer

 COMMISSIONER