

STATE OF NEW YORK  
STATE TAX COMMISSION

TAX Personal Income  
ART. 16 374

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In the Matter of the Application :  
of :  
NORMAN SOLOWE :  
For Revision or Refund of Personal :  
Income Taxes under Article 16 of the :  
Tax Law for the year 1959 :

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NEW YORK :  
GROSS INCOME :  
DETERMINATION :  
CASE LAW CITATIONS :  
REMARKS :

The taxpayer having filed an application pursuant to Section 374 of the Tax Law for revision of an assessment dated May 5, 1964, of personal income taxes imposed under Article 16 of the Tax Law for the year 1959 and such application having been denied and a hearing thereon having been duly demanded and held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered

the State Tax Commission hereby

FINDS:

1. The sole question herein is the resident status of the taxpayer under Tax Law Section 350(7) for the year 1959.
2. During the taxable year in question, the taxpayer held a lease to a three-room, unfurnished apartment at Number 2, Fifth Avenue. The rent for the apartment was paid by Mighty Miss, Inc. located in New York City of which taxpayer was a one-third shareholder and secretary-treasurer. The minute books of the corporation recorded the authorization of the rental for corporate purposes.
3. Taxpayer is a forty-five year old bachelor and claims to be living with his father in a four-and-a-half room apartment at 802 East Front Street, Plainfield, Union County, New Jersey.
4. Taxpayer had a telephone listing at the Fifth Avenue Apartment.

5. The President of the corporation, a Mr. Sol Meyers, stated that the apartment was used not primarily for entertaining customers, but rather for the personal convenience of corporate officers. Although this was hearsay as testified to by the tax examiner, the taxpayer has been given the opportunity to submit information after the hearing and no denial or explanation has been forthcoming.

6. The taxpayer did not keep a record as required by regulations (20 NYCRR 269.1 (b)) of his presence in New York. The taxpayer did not appear at the hearing to testify as to his presence in New York although he had been notified of this issue.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission

DETERMINES:

A. The taxpayer maintained a permanent place of abode in New York State during 1959.

B. The taxpayer failed to sustain the burden of proof that he was not present in the state for more than 183 days in 1959.

C. The taxpayer is a statutory resident of New York.

D. The assessment does not include taxes or other charges which could not have been lawfully demanded.

E. The demand for hearing is dismissed and the assessment dated May 5, 1964, is affirmed in the amount shown thereon, \$2,138.33, together with such additional charges if any, as may be lawfully due under Sections 376 and 377 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970

Norman Galloran  
PRESIDENT

Abraham M. Auloy  
COMMISSIONER

Milton Korman  
COMMISSIONER