

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK  
STATE TAX COMMISSION

TAXPAYER Mr. Jerome T. J.  
DE. 16 SECS. 357.2 p 8  
(1955)  
WORDS "subsequent"  
to a decree

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

LAW CITATIONS

*See "Memorandum"*  
*dated 1965/2/18*  
*X B, re "Harold"*  
*Steinberg determining*  
*dates*  
*6/24/69*  
*Law Bureau*  
*files*

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 B963366 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, 1953, 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 1953, 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 1953 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 § 399.2r8 as of 1953, 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 1953 of payments made in 1953 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 1953, 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 1959

STATE TAX COMMISSION

JOSEPH H. MURPHY

President

A. BRUCE MANLEY

Commissioner

MILTON KOERNER

Commissioner

/S/