

STATE OF NEW YORK

STATE TAX COMMISSION

STATE TAX COMMISSION - TAXES

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In the Matter of the Application :

of :

STEVEN M. AND EVA SHELLEY :

DETERMINATION

For Revision or Refund of Personal
Income Tax under Article 16 of
the Tax Law for the year 1959 :

The taxpayers, Steven M. and Eva Shelley, hereinafter referred to as taxpayer, filed an application dated July 23, 1963 pursuant to Tax Law Section 374 for refund of Personal Income Tax imposed by 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 the taxpayer having waived personal appearance thereat and the application having been SUBMITTED to the State Tax Commission on the file of the Personal Income Tax Bureau and such file having been duly examined and considered, it is determined as follows:

FINDINGS OF FACT

1. Taxpayer's return for the calendar year 1957 was filed on time-on or before April 15, 1958. On this return the taxpayer reported the same income and deductions as reported on taxpayer's Federal return.
2. A claim for refund of Federal income tax was filed on January 11, 1961.
3. By a letter and a notice of adjustment each dated October 4, 1961, the taxpayer was notified by the Federal authorities that a refund would be allowed in the amount of about half of taxpayer's claim. Said letter stated that the taxpayer had already agreed to the amount of such refund.

4. On October 5, 1962, the Department received from the taxpayer, Form IT-115, "Notice of change in taxable income by United States Treasury Department---", dated September 22, 1962, with respect to the calendar year 1957 showing a reduction of income resulting from Federal audit. Said form states that the date of final notice of Federal changes in net income is October 4, 1961.

5. On July 23, 1963, the Department received a claim for credit or refund with respect to the amounts here in dispute. Such claim was received as adequate in form to constitute an application for revision or refund. Such application was denied on Jan. 5, 1965 and taxpayer demanded a hearing on February 4, 1965.

CONCLUSIONS OF LAW

A. The application for revision or refund was not filed within 2 years from the time of filing of the return of taxpayer and the tax has not been recomputed. Such application is therefore untimely (Tax Law Section 374; 20 NYCRR 270.22).

B. Within the meaning of Tax Law Section 276(2) the final determination of change in Federal taxable income occurred on October 4, 1961 when a refund was allowed and not two years later when the time to appeal there from may have become final. This meaning of "final determination" is stated in the regulations (20 NYCRR 270.21(f) example 2) and is identical to the meaning of the same words found in Tax Law Section 211-3 of Article 9-A as stated in regulations in effect since 1945 (Regulations 9-A, Section 502; Off. Comp. of Codes, Rules and Regs. Vol. 2, 2nd Off, Cum. Supplement, page 201). Section 367(2) was added to the Personal Income Tax Law by chapter 93 of the laws of 1949 specifically to adopt the requirements of Article 9-A as to notice of Federal changes (1949 N.Y. State Legislative Annual p. 297).

C. The taxpayer failed to give proper notification of a change in Federal taxable income within 90 days after the final determination thereof (Tax Law Section 367(2); Reg. 20 NYCRR 270.21(a)). The Tax Commission therefore has no power to grant a refund under Tax Law Section 373(4).

D. The application for revision or refund was properly denied.

DATED: *Albany, N.Y.*
February 11, 1970

STATE TAX COMMISSION

Norman Gellman

PRESIDENT

Bruce Rosenberg

COMMISSIONER

Milton Kremer

COMMISSIONER