

STATE OF NEW YORK
STATE TAX COMMISSION

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TAX personal income

REF. 16 374

In the Matter of the Application
of
SAMUEL M. and MURIEL F. KOENIGSBERG
For Revision or Refund of Personal
Income Taxes under Article 16 of
the Tax Law for the year 1957

DETERMINATION

CONCLUSIONS

REFERENCES

The taxpayers having filed an application pursuant to Section 374 of the Tax Law for refund of personal income tax paid on April 18, 1956, and imposed by Article 16 of the Tax Law for the year 1955 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 issues in this hearing are the timeliness of the application for refund and the allocation to New York State of executor's fees earned by a non-resident.
2. The 1955 tax return of taxpayers is a non-resident return (IT-203) listing on page 2, part 2, line 34 income from the "Estate of Elisha M. Friedman, c/o Schapiro, Wisan and Schapiro, 111 Broadway, New York City" the sum of \$23,945.63. This is the only income listed on the return and the only information given with respect to such income.
3. The estate was the estate of taxpayer's uncle, a resident of New York. Taxpayer qualified as executor in the Surrogates Court, New York County in April 1951 while he also was a resident of New York.

4. Taxpayer became a resident of New Jersey in 1952. In July 1955, the taxpayer made his final accounting and received his fees as executor. On the advice of the attorney for the estate, he included the entire fee, without allocation, in his tax return.

5. The application for refund was received by the Department on July 15, 1958. It alleges that the executor's fees should have been allocated partly to New Jersey. It was denied on February 17, 1959, and the demand for hearing was filed on May 14, 1959.

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

DETERMINES:

A. The application for refund was filed two years and three months after the return was filed and, therefore, was three months late under the provisions of Tax Law Section 374.

B. The Commission will exercise its power to make a refund under Tax Law Section 373(g) and in contravention of Section 374 only where the mistake alleged to have been made in the preparation of the return is obvious from the face of the return itself. Such power is discretionary with the Commission.

C. The demand for a hearing is denied and the denial of the application for refund is affirmed.

DATED: Albany, New York

March 24, 1970

STATE TAX COMMISSION

Norman Gellman

PRESIDENT

Bruce Macleay

COMMISSIONER

William Kren

COMMISSIONER