

File

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Personal Income  
16 374

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application :  
:   
of :  
ROBERT J. CARROLL and DOROTHY CARROLL :  
For a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 16 of the Tax Law for :  
the Years 1949 and 1952 :  
:

CITATIONS  
DETERMINATION

Robert J. Carroll and Dorothy Carroll having filed application for revision or refund of Personal Income taxes additionally assessed for the years 1949 and 1952, and said applications having been denied, and a hearing having been held before Francis X. Boylan, Esq., Hearing Officer at the offices of the Department of Taxation and Finance, 80 Centre Street, New York, New York, on October 8, 1969 and the applicant taxpayer, Robert J. Carroll, having appeared in person and the Income Tax Bureau of the Department having appeared by Edward H. Best, Counsel, (Albert Rossi, Esq. of Counsel), and the record having been read, upon due deliberation the State Tax Commission hereby finds that:

1. By two notices of additional assessments of income tax, assessment numbers 050681 and 050682, both dated July 29, 1963, the Department of Taxation and Finance, pursuant to provisions of Tax Law § 377 assessed additional tax, penalty, and interest by reason of Federal adjustments to the taxpayers' Federal returns for the years 1949 and 1952 and the taxpayer's failure to comply with the Department's requests to submit certain information requested by letters dated August 2, 1962 and January 31, 1963.

On findings of a Federal adjusted gross income for the year 1949 in the amount of \$18,418, an amount greater than that reported in the state return, the Department assessed additional personal

income tax in the amount of \$616.98 with a penalty of fifty percent interest at six percent to September 15, 1963, to a total of taxes, penalty and interest in the amount of \$1422.14.

As to the year 1952, the Federal adjusted gross income was found to be the amounts of \$11,060, and additional normal tax was assessed in the amount of \$258.32 with a penalty of fifty percent, and interest at six percent to September 15, 1963, to a total of taxes, penalty and interest in the amount of \$548.93.

2. By application for revision of refund as to both years under consideration, 1949 and 1952, the taxpayers made three objections, that no hearing had been given, that the State Tax Commission lacked jurisdiction to make the assessments, and that the assessments when made were barred by the applicable statute of limitations.

3. The Federal adjusted gross income of the taxpayers for the years 1949 and 1952 was found by the Internal Revenue Service to have been the amounts of \$18,418 and \$11,060 respectively as stated in paragraph 1 hereof, it is found.

Upon the foregoing facts and findings the State Tax Commission hereby determines:

A. That the assessments set forth in paragraph 1 above were lawfully made pursuant to Tax Law § 373.1 which since 1949 has provided that if a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue..., the amount of tax due may be assessed at any time.

Although with reference to returns originally made before the effective date (July, 1949) of the amendment to this subdivision (T.L. §373.1), there was a settled policy that assessments made by reason of an omission to report a Federal change could only be made if further assessments generally were not already barred (as of July, 1949) by the other applicable statutory time limitations in effect at the time of the 1949 amendment, that policy does not affect the assessments under consideration here,

which were for the years 1949 and 1952, as to which years the earlier time limitations had not run.

B. That the information as to the Federal changes was not received by the Department unlawfully, since, pursuant to former Internal Revenue Code Section 55(b) of the 1939 Code, inspection of Federal returns by the State Tax Commission or its representative was authorized.

C. The said assessments, set forth in paragraph 1 are affirmed but are modified to remit the penalties assessed pursuant to the authority of Tax Law § 379.2.

The assessment as to 1949 is the amount of \$616.98 for additional personal income taxes.

The assessment for 1952 is the amount of \$258.32 for additional personal income taxes.

The said restated assessments are subject to interest at the rate of 6% per annum from July 29, 1963 until payment is made.

And it so Ordered.

DATED: Albany, NY

March 9, 1970

STATE TAX COMMISSION

*Norman K. Halloran*  
PRESIDENT

*Bruce M. Mawley*  
COMMISSIONER

*Milton Kanner*  
COMMISSIONER