

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

TAX _____

ART. 22 _____

FILE NO. _____

CYC. _____

DECISION ON

CASE NO. _____

DEFAULT

REMARKS

In the Matter of the Application :
of :
JOSEPH J. FARRELL :
For a Redetermination of a Deficiency :
or for a Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
year 1961 :

The petitioner having filed a petition for a redetermination of a deficiency or for a refund of Personal Income Taxes under Article 22 of the Tax Law for the year 1961, and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York, on May 13, 1969, before Francis X. Boylan, Esq., Hearing Officer, and the Department having appeared by E. H. Best, Counsel (Solomon Sies, Esq., of counsel) and there having been no appearance on behalf of the petitioner and the record having been duly examined and considered, the State Tax Commission finds that:

(1) The failure of any appearance on behalf of the petitioner at the scheduled hearing constituted a default.

(2) By a notice of deficiency, dated April 13, 1966, and an attached statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of personal income taxes for the year 1961 in the amount of \$40.00 together with interest in the amount of \$7.19, to a total of \$47.19 for the said year as of the date of the said notice.

A claimed loss in the operation of an elected "small business corporation" was held not allowable to petitioner who had filed a

non-resident return and was found to have been a non-resident in the year under consideration. Such a loss is not an allowable deduction to a non-resident (T.L. 632(b) (4) (B)).

(3) It is found on review that the said determination of a deficiency was not unlawful or incorrect.

Petitioner was a domiciliary of the State of New Jersey and did not adequately establish that he maintained a permanent place of abode in this State and that he was present here for more than 183 days so as to be a statutory resident (T.L. §605). Assuming, as the petition stated, that he and another stockholder of the corporation jointly held a lease during the year on premises at 405 E. 82nd Street, New York, New York, this fact in the circumstances did not establish that the premises constituted "a permanent place of abode" maintained by him. It is not stated that these premises were not used for the business of the corporation, and no proof was offered as to the extent the premises were used as a place of personal residence. No proof of the other factor required, actual presence in the State for more than 183 days, was offered, but assuming as probable such presence here, the leased premises probably were not, and were not shown to have been, "a permanent place of abode" with the meaning intended. Statutory residence was not established, it is held.

Accordingly, the State Tax Commission hereby

DECIDES:

(A) That the deficiency set forth in paragraph 2 hereof is affirmed and constitutes an assessment of taxes as of the date of the said notice thereof. The said assessment is subject to further

interest as provided by Tax Law (§§684 and 685).

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970.

Norman Hallman
PRESIDENT

Abner Massey
COMMISSIONER

Milton Kremer
COMMISSIONER