UBT - Personal Income
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STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

MAX SCHENFELD

For Revision or Refund of Personal Income Taxes Under Article 16 and Unincorporated Business Taxes Under Article 16-A of the Tax Law for the Years 1944 and 1945

Max Schenfeld, the taxpayer, having filed an application for revision or refund of personal income taxes and of unincorporated business taxes for the years 1944 and 1945, and such application having been denied, and a hearing having been held at the offices of the State Department of Taxation and Finance, 80 Centre Street, New York, New York before Francis X. Boylan, Hearing Officer, on May 3, 1965 and the taxpayer, Max Schenfeld, having appeared by Liber & Colligan, of Jamaica, New York, by Thomas J. Liber, Esq., of counsel, and the taxpayer having been present in person, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notices of additional assessments AA SIB 9628 and AA SIB 9629, both dated December 16, 1959, the State Tax Commission made assessments of additional taxes against taxpayer for the years 1944 and 1945, respectively, by reason of further unreported income and certain disallowed deductions. For the year 1944, it assessed additional normal tax in the amount of $2,304.88, and additional unincorporated business tax in the amount of $1,442.03, to a total of additional taxes, and

penalties and interest of $20,533.07; for the year 1945, the Commission assessed additional normal tax in the amount of $1,313.36 and additional unincorporated business tax in the amount of $1,010.79, to a total of additional taxes, and penalties and interest of $12,178.55 for that year.

The said totals as to both years were arrived at by doubling the aggregate tax due in each year, and adding thereto a further charge at the rate of 1% per month down to October 15, 1959, pursuant to the authority of Tax Law section 377.3 providing for such penalties in cases of willfully false returns made with intent to evade the tax.

(2) At the time of the additional assessments in 1959 the taxpayer's state income tax returns for 1944 and 1945 had been destroyed in accordance with the Department's practice.

The additional assessments in 1959 were based on a written report made by an investigator of this Department supplemented by and based on a report by the federal Treasury Department by letter addressed to the taxpayer dated July 9, 1951, summarizing an audit of the taxpayer's federal returns for the years under consideration.

In the years under consideration, 1944 and 1945, the taxpayer made returns of normal and unincorporated business tax as a jobber of dress trimmings. In 1944, his normal income reported for purposes of state taxes, as constructed from his federal returns was $13,694.38 for normal income tax purposes, and $20,764.28 for unincorporated business tax purposes. In 1945, the taxpayer's New York normal income, as constructed,

was $5,448.37 and his income subject to unincorporated business tax, the amount of $8,172.56.

In 1944 he was assessed on additional income of $43,402.68 for normal tax purposes, and on $31,832.78 for unincorporated business tax. This total additional income for 1944 reflected the disallowing of certain items of expense disallowed on the federal returns and the adding of the amount of $39,474.78 in unreported sales.

The total additional income in 1945 for normal tax purposes was fixed in the amount of $39,832.54, and for unincorporated business tax purposes, in the amount of $32,058.35. These figures for 1945 similarly were arrived at by disallowing certain items of expense that were disallowed on federal audit and by adding the amount of $39,798.35 in additional unreported sales.

These modifications after certain statutory allowances for state tax purposes resulted in the total additional income stated for each of the two years.

(3) The Department's investigator's report at the time of such additional assessments in 1959 indicated that there was a federal indictment arising out of taxpayer's returns for the years under consideration, as a result of which taxpayer was convicted and paid two fines totaling $3,000.

In fact, and according to a recent report of an inspection of the criminal court docket of the U.S. District Court, at New York, New York under docket No. 135-27, judgment No. 53358, was entered April 2, 1951, against the taxpayer,

Max Schenfeld, who was indicted on two counts for attempting to evade federal income taxes for the years 1944 and 1945. After pleading not guilty on March 14, 1951, the defendant taxpayer pleaded guilty on April 2, 1951 and on April 23, 1951, he was sentenced to pay a fine of $1,500 on each of the counts to a total of $3,000. On April 30, 1951, the defendant paid the sum of $3,000.

(4) The taxpayer in the present proceeding filed applications for revision or refund as to the additional assessments for both 1944 and 1945, stating therein only that he raised questions of law and fact. The objections actually made in taxpayer's behalf were that there was no adequate basis for assessments premised on fraud, and that the assessments were therefore untimely made; and that the additional assessments were excessive in any case in that no allowance was made for the cost of goods sold, as an expense to be offset against the proceeds of the asserted unreported sales.

(5) At the time of the additional assessments made by reason of a finding that the returns under consideration were false and fraudulent, the State Tax Commission, it is found, was informed by its investigator's report that the taxpayer had been convicted of attempted federal income tax evasion for the years under consideration; and the information so reported was in fact true.

(6) The taxpayer did not testify at the hearing herein pursuant to which this determination is made, and, it is found, there was no testimony by any witness in his behalf, or any

evidence, that the amounts of net income computed and reported by taxpayer for state tax purposes in 1944 and 1945 did not in fact reflect all the costs of all sales made, including those sales on which he did not report the income or pay taxes.

Upon the foregoing facts and findings and all the evidence herein, the State Tax Commission hereby

DETERMINES:

(A) That the additional assessments under consideration, which were based on a finding of wilfully false returns with intent to evade the tax in the years under consideration, were adequately supported by the information the Department had at the time of such findings and assessments, and said assessments were not arbitrary or unreasonable.

(B) That, in the absence of evidence that the costs already taken by taxpayer, and reflected in the taxpayer's returns for the years in question, were not the full costs, including costs related to sales which the taxpayer did not include in income or pay taxes on, the Department's not making any special allowance, itself, (in computing the additional assessments) for estimated costs of goods sold in such unreported sales, as an offset to income from such sales, was not unreasonable or unlawful.

(C) That the additional assessments, both dated December 16, 1959, for the years 1944 and 1945, respectively, assessing tax penalty and interest to a total of $20,533.07 for 1944, and $12,178.55 for 1945, as of October 15, 1959, were lawful and correct, pursuant to provisions of Tax Law

section 373 providing for assessment at any time in the case of a wilfully false or fraudulent return with intent to evade the tax, and pursuant to Tax Law section 377.3 providing for doubling the tax due and increasing it at the rate of 1% monthly while unpaid in such cases of false or fraudulent returns. The said assessments are therefore affirmed.

And it is So Ordered

DATED: Albany, New York this 9th day of March, 1970.

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER