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MEMORANDUM

Income Tax Determinations
A-2
DiCostanza, John & Frieda

TO: Commissioners Murphy, Palestin & MacDuff
 FROM: Solomon Sies, Hearing Officer
 SUBJECT: JOHN DICOSTANZA and FRIEDA DICOSTANZA, his wife

1953 Assessment #B-809735
 1956 Assessment #B-809736
 1957 Assessment #B-809737

JOHN DICOSTANZA

1952 Assessment #B-809732
 1954 Assessment #B-809733

FRIEDA DICOSTANZA

1954 Assessment #B-809738

Article 16

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on February 4, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

On September 12, 1960, the Income Tax Bureau, on information furnished by the taxpayers, made assessments of personal income taxes against them for the years 1952, 1953, 1954, 1956 and 1957 because of their failure to file returns when due. The Income Tax Bureau allowed the taxpayers the standard optional deduction. Subsequent to the issuance of the assessments, the taxpayers filed delinquent returns and claimed itemized deductions. The issue involved herein is whether or not the taxpayers may claim itemized deductions when they are unable to submit proof or evidence in substantiation thereof.

The taxpayer, Frieda DiCostanza, appeared at the hearing and testified that original returns had been filed for the years in issue when they became due; that said returns contained itemized deductions and that the taxes computed to have been due on said returns were paid by money order; that the money order receipt had been destroyed and that the taxpayers could not substantiate the payment of the taxes for the years involved; that the taxpayer, Frieda DiCostanza, did not have any proof whatsoever to substantiate any of the itemized deductions claimed by herself and her husband on the delinquent returns filed for the years 1952, 1953, 1954, 1956 and 1957 (Minutes of Hearing, page 8).

In view of the fact that the taxpayers have failed to submit any proof whatsoever to substantiate any of the itemized deductions claimed by them for the years in issue, I am of the opinion

TO: Commissioners Murphy, Palestine & Macduff Page 2
RE: JOHN DICOSTANZA and FRIDA DICOSTANZA, his wife

that the assessments should be sustained.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

AUG 11 1965

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

ss/te

(Dec. 21, 1965)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

JOHN DICOSTANZA and FRIEDA DICOSTANZA,
his wife

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEARS 1952, 1953, 1954, 1956 and 1957.

The taxpayers, John DiCostanza and Frieda DiCostanza, his wife, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1952, 1953, 1954, 1956 and 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y., on the 4th day of February, 1960, before Solomon Eies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Frieda DiCostanza, appeared in person and testified in connection therewith and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers having failed to file personal income tax returns for the years 1952, 1953, 1954, 1956 and 1957 when due; that based upon information furnished by the taxpayers, the Department of Taxation and Finance on September 12, 1960, made assessments of personal income taxes against the taxpayers herein as follows: against John DiCostanza for the year 1952, Assessment #R-809732; against John DiCostanza and Frieda DiCostanza, his wife, for the year 1953, Assessment #R-809735; against John DiCostanza for the year 1954, Assessment #R-809733; against Frieda DiCostanza for the year 1954, Assessment #R-809738; against John DiCostanza and Frieda DiCostanza, his wife, for the year 1956, Assessment #R-809736; against John DiCostanza and Frieda DiCostanza, his wife,

for the year 1957, Assessment #B-809737; that upon said assessments the Department of Taxation and Finance allowed the taxpayers the optional standard deduction.

(2) That on June 30, 1961, the taxpayers filed delinquent returns for the years 1952, 1953, 1954, 1956 and 1957 in which they claimed itemized deductions amounting to \$1172.93, \$1062.23, \$1285.04, \$1037.69 and \$1162.14, for said respective years.

(3) That although the taxpayer, Frieda DiCostanza, testified at the hearing that she and her husband had originally filed returns for the years in question when they became due and paid the tax thereon by money order, she was unable to produce the money order receipts since they had been destroyed; that she was unable to present any further proof to corroborate said contention; that she was notified by the Department of Taxation and Finance that it had no record of the receipt of the original returns filed by herself and her husband for the years in question and had no record of any payment of the taxes alleged to have been made (Minutes of Hearing, page 7); that the taxpayers failed to submit and are unable to submit any further proof or evidence to substantiate any of the itemized deductions claimed by them for the years 1952, 1953, 1954, 1956 and 1957.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINE:

That the taxpayers have failed to submit any proof to substantiate the itemized deductions claimed by them on the delinquent returns filed for the years in issue as more fully set forth in Finding (3) above; that the assessments for the years 1952, 1953, 1954, 1956 and 1957 (Assessments No. B-809732, B-809735, B-809733, B-809738, B-809736 and B-809737, respectively) are, therefore, correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the taxpayers' applications for revision or refund with respect to

the aforementioned assessments be and the same are hereby denied.

DATED: Albany, New York, on the 29th day of December, 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

Commissioner