

DEPARTMENT OF TAXATION AND FINANCE

Income Tax Determinations
EDWARD ROOK *A-Z*

Mc Grath John H.
Mary F.

Mr. Berinstein:

Re: JOHN H. McGRATH and MARY F. McGRATH

Returned herewith is the file you submitted for Tax Commission approval in the above matter.

You will note that Commissioner Palestin has indicated his approval on your letter; Commissioners Murphy and Macduff have each signed the two copies of the report of the Special Investigations Bureau dated September 9, 1965.

Secretary to the
State Tax Commission

October 13, 1965



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BENJAMIN B. BERINSTEIN

REGIONAL TAX SUPERVISOR

METROPOLITAN REGIONAL OFFICE

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT

IRA J. PALESTIN

JAMES R. MACDUFF

80 CENTRE ST., NEW YORK 13, N. Y.

m R September 16, 1965

for Tax Com. approval

Commissioner Joseph H. Murphy
State Tax Commission
Albany, New York 12226



My dear Commissioner:

John H. McGrath and Mary F. McGrath (his wife)
(Special Investigations Bureau Matter)

Transmitted herewith in duplicate is report of investigation submitted by Nat Mitchell of the Special Investigations Bureau with respect to the above indicated taxpayers.

The matter was referred to the Special Investigations Bureau after it was disclosed by our Federal Information Unit that there had been Federal adjustments for the years 1954 through 1956, and such adjustments had not been reported to us by the taxpayers.

The investigation disclosed that the taxpayer and his wife have been domiciled and have resided in Texas for many years. The taxpayer was temporarily assigned to the New York office of his employers and continued to maintain a permanent place of abode in Texas and his wife continuously resided there. He is now retired and continues to live in Texas.

Although the taxpayer filed New York State returns covering personal service compensation received in New York State, additional income in the form of interest and dividends received by his wife on assets owned by her were not reported. This was disclosed upon the basis of the information obtained from the Federal reports.

In view of the fact that Mary F. McGrath continuously resided in Texas, the taxpayer proceeded upon the basis that his wife's income was not properly includable for State tax purposes.

Based upon the fact that the returns filed for State purposes for the years under review were set forth to be joint returns, it was the conclusion of the Special Investigations Bureau that the taxpayers are properly liable to the tax on the income and dividends referred to.

Giving heed to the full cooperation extended by the taxpayer and his representatives, and the debatable question involved in taxing the wife's income, the recommendation has been made that penalties and interest be waived and the basic tax tendered be accepted.

*Approved
10/4/65*

XERO COPY


XERO COPY

September 16, 1965

Upon review of all of the circumstances involved, the writer is inclined to endorse the recommendations of the Special Investigations Bureau.

If, upon review, you are in agreement with the proposed disposition of the matter, would you be kind enough to return one approved copy of the report here submitted.

Very truly yours,


Benjamin B. Berinstein
Regional Tax Supervisor

BBB:GB
Enclosure (2)

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: N. H. MITCHELL
Deputy Tax Commissioner

OFFICE

FROM: Special Investigations Bureau

DATE

SEP 9 1965

SUBJECT: John H. McGrath and
Mary F. McGrath, Wife
12114 Rhett Drive
Houston, Texas

Years	50% Penalty	6% Interest to 9/15/65
1954	\$ 629.25	\$ 785.35
1955	708.09	795.51
1956	549.03	553.64
	<u>\$1,886.37</u>	<u>\$2,134.50</u>

Application has been made for abatement of penalty (\$1,886.37) and interest (\$2,134.50) for the years 1954, 1955 and 1956.

In a letter dated August 17, 1965 (copy enclosed) from the attorneys, Vinson, Elkins, Weems & Searls of Houston, Texas, there was enclosed a cashier's check in the amount of \$3,437.20. This was tendered on behalf of the taxpayers in full payment of the balance of basic tax due (see schedule attached). Assessments have not been issued.

Our audit is based upon Federal findings. We have been in contact with taxpayers by correspondence, by telephone and in office conference. They have been exceptionally cooperative.

Pursuant to our request, there were submitted IT 115's, a remittance for \$335.53 (in payment of their computation of the tax on the IT 115's), a revised Revenue Agent's report, photos of retained copies of New York State tax returns (Albany records had been destroyed), and photos of the checks in payment of tax on the original returns.

The IT 115's, as filed, listed only the Federal disallowances applicable to income earned in New York State, such as medical expense, contributions, and business entertainment expense. Taxpayers computed the additional tax and sent a check in payment.

Under "Changes that do not affect New York State income tax returns" on the IT 115's, notations were made of additional Federal changes pertaining to dividend income, interest expenses on dividend income, and capital gains. These amounts were excluded from the computation of additional New York State tax due.

John McGrath (now retired) was employed by the Traffic Division of a steamship company, and temporarily assigned to the New York office. He reported the salary earned in New York on the State tax returns and paid the tax due.

N. H. MITCHELL

-2- Re: John H. McGrath and
Mary F. McGrath, Wife

Mary McGrath continued to maintain a permanent residence in Houston, Texas, while her husband was employed in New York State.

However, the retained copies of New York State returns voluntarily submitted to us by the taxpayers were joint resident returns with an address in Forest Hills, New York. The taxpayers contend that the joint, resident returns were filed in error, inasmuch as the wife had not changed her permanent residence in Texas. They advise further that the majority of the investments were in the wife's name, and that the dividends were mailed to her at her permanent residence in Texas.

Some \$46,000.00 of the \$53,000.00 in Federal changes comprise dividend, interest and capital gain adjustments. It is doubtful whether our position can be sustained on appeal for most of the additional income included in our audit.

We recommend that the check in the amount of \$3,437.20 be accepted in full payment of the basic tax for the years 1954, 1955 and 1956. It is further recommended that penalty and interest be abated in full.

Respectfully submitted,

SPECIAL INVESTIGATIONS BUREAU

E. Lind
E. Lind
Senior Special Tax Investigator

DATED SEP 10 1965

CONCURRED IN:

M. Wacht
M. Wacht
Principal Special Tax Investigator

N. H. Mitchell
N. H. Mitchell
Deputy Tax Commissioner

APPROVED:

B. B. Berinstein
B. B. Berinstein
Regional Tax Supervisor

S. Dickman
S. Dickman
Associate Special Tax Investigator

*Approved
9/28/65
LOR
10-11-65*