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MEMORANDUM

Najar, David

TO: Commissioners Murphy, Palestin and Macduff  
FROM: Mr. Schapiro, Hearing Officer  
SUBJECT: DAVID NAJAR

Applications for revision or refund of  
personal income taxes under Article  
16 of the Tax Law for the years 1954,  
1955, 1956 and 1957

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on October 30, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not a net worth audit disclosed additional income which the taxpayer failed to report on his income tax returns for the years 1954 through 1957.

The taxpayer filed personal income tax returns for all of the above years, reporting thereon salary income earned as a longshoreman and itemizing his deductions. The taxpayer signed consents extending the time of the State Tax Commission to determine and assess taxes up to April 15, 1961. Prior to that time the State Tax Commission issued assessments for all of the years involved. The assessments were based upon a net worth audit showing greater gross income for each of the years involved than that reported on the return. The gross income computed for each of the years involved was arrived at by adding together (a) all the expenses and deductions listed on the taxpayer's returns for the years involved, (b) New York State income taxes paid during such years, (c) Federal withholding and social security taxes computed to have been paid by the taxpayer, a salaried employee, during such years, (d) payments of \$20 per week alleged by the taxpayer to have been paid to his sister for room and board (page 19 of hearing minutes) for such years, (e) the net yearly increases in bank deposits in accounts which were opened by the taxpayer in the year 1954 and closed in 1957, (f) the amount of \$3,490.68 found on the taxpayer's person in 1957, and (g) estimated additional living expenses incurred by the taxpayer in the amount of \$30 per week.

The taxpayer contended that the monies deposited in the bank account for the year 1954 represented proceeds of loans made to him in prior years and kept in his home in a tin

box. Approximately \$2,600 of the cash found upon the taxpayer's person in the year 1957 belonged to his sister. His actual additional living expenses amounted to \$10 a week instead of the \$30 a week estimated on the audit. The taxpayer, however, failed to explain the increases in bank deposits made during the interim years. The taxpayer further contended that although he had engaged in money lending transactions, his losses exceeded his interest income from such transactions.

After listening to the taxpayer's testimony and observing the taxpayer's demeanor, I am of the opinion that the taxpayer's testimony lacks credibility. When asked whether the taxpayer reported additional interest income earned from usurious transactions, the taxpayer stated that he did not since he lost more than he made (page 25 of hearing minutes). If this were true, the discrepancy between the gross income reported and that as computed on the net worth audit statement is even more pronounced. Even if, for the sake of argument, the bank deposits for the year 1954 were deemed to have been deposits of \$3,500 each kept in the taxpayer's home, this would not explain the increase in bank deposits for subsequent years. Furthermore, even if, for the sake of argument, we accept the taxpayer's statement that additional living expenses only amounted to \$10 per week instead of \$30 per week, and even if the major portions of money found on the taxpayer's person were those of his sister, there still remains an unexplained increase in bank deposits for years subsequent to 1954.

Because the stipulations extend the time of the State Tax Commission to make an assessment, the burden of proof of establishing the invalidity of such assessments is upon the taxpayer. I find that the taxpayer has completely failed to establish that the assessments are erroneous. Accordingly, I have prepared a proposed determination affirming the assessments and denying the taxpayer's application for revision or refund.

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

/s/

MARTIN SCHAPIRO

Hearing Officer

ME:ca  
Enc.

December 8, 1964

/s/

V. P. M.

Approved

/s/

E. H. BEST

Approved

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATIONS**

**OF**

**DAVID NAJAR**

**FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEARS 1954, 1955, 1956 AND 1957**  
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David Najar having duly filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the calendar years 1954, 1955, 1956 and 1957 and a hearing having been held in connection therewith on October 30, 1964 at the office of the State Tax Commission, 80 Centre Street, New York, New York before Martin Schapiro, Hearing Officer, at which hearing the taxpayer appeared personally and testified on his own behalf and Abraham Schwartz, Supervising Tax Examiner, having appeared and testified on behalf of the State Tax Commission, and the record having been duly examined and considered,

**The State Tax Commission hereby finds:**

(1) That the taxpayer filed returns of income for the years 1954, 1955, 1956 and 1957 listing therein salaried income received as an employee and claiming specific deductions on each of the returns filed; that after obtaining the written consent of the taxpayer to extend the time of the State Tax Commission to determine or assess additional personal income taxes on or before April 15, 1961, the State Tax Commission prior to such date issued additional assessments of income tax for the years involved based upon unreported additional income disclosed upon audit and investigation.

(2) That said audit report showed larger gross income received by the taxpayer than reported by him in his returns; that the taxpayer's gross income computed on said audit for each of the years involved was arrived at by adding together the following:

- (a) All the expenses and deductions listed on the taxpayer's returns for the years involved.
- (b) New York State income taxes paid during such years.
- (c) Federal withholding and social security taxes computed to have been paid by the taxpayer, a salaried employee, during such years.
- (d) Payments of \$20 per week alleged by the taxpayer to have been paid to his sister for room and board (page 19 of hearing minutes) for such years.
- (e) The net yearly increases in bank deposits in accounts which were opened by the taxpayer in the year 1954 and closed in 1957.
- (f) The amount of \$1,450.68 found on the taxpayer's person in 1957.
- (g) Estimated additional living expenses incurred by the taxpayer in the amount of \$30 per week.

Credit was allowed the taxpayer in the amount of \$1,090 representing cash proceeds from the sale of the taxpayer's home.

(3) That the taxpayer contended that the monies deposited in the bank account for the year 1954 represented proceeds of loans made to him in prior years and kept in his home in a tin box; that approximately \$2,600 of the cash found upon the taxpayer's person in the year 1957 belonged to his sister; that his actual additional living expenses amounted to \$10 a week instead of the \$30 a week estimated on the audit; that the taxpayer, however, failed to explain the increases in bank deposits made during the interim years; that the taxpayer further contended that although he had engaged in money lending transactions, his losses exceeded his interest income from such transactions.

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

(A) That during the years involved the taxable net income of the taxpayer was greater than that reported by him on his returns for such years; that the taxpayer has failed to establish that the assessments imposing additional taxes upon such undisclosed income were erroneous or improper.

(B) That, accordingly, the additional assessments of income for the years 1954, 1955, 1956 and 1957 issued on March 21, 1961 (Assessment Nos. SIB-10714, SIB-10715, SIB-10716 and SIB-10717, respectively) are correct and do not contain any taxes or other charges which are not lawfully due and owing.

DATED: Albany, New York, on the 19th day of August , 1965 .

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

Commissioner

/s/

JAMES R. MACDUFF  
**Commissioner**