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MEMORANDUM

Income Tax Determination
A-2
Reid, Francis J.

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro

SUBJECT: Formal Hearing in the Matter of the Application of FRANCIS J. REID for Revision or Refund of Personal Income Taxes Under Article 16 of the Tax Law for the Year 1955

The primary question herein is whether or not the taxpayer's application for revision or refund was filed timely in accordance with section 374 of the Tax Law.

The taxpayer filed an application for revision or refund for personal income tax for the year 1955 on the basis that he had included in his 1955 income tax return certain income which was received as sick pay during ten weeks of hospitalization. A written employers plan providing for the payment of such sick pay and presumably exempting such income from tax in accordance with section 359(2)(e) of the then existing tax law was confirmed by the employer upon information requested by the State Tax Commission. However, despite its prior request for such information, the Income Tax Bureau denied the application for refund on the ground that the same was untimely.

The aforesaid application which was denied had been presumably received by the mail room on April 22, 1958, one week after the expiration of the time to file the application. No envelope was found with the file, even though the taxpayer alleged that the same was mailed. The taxpayer filed a formal demand for hearing. Because of the fact that the Income Tax Bureau had previously sought information from the employer confirming the existence of a sick pay, health or accident insurance plan, and in view of the fact that the application may have been timely but not stamped immediately because of the voluminous amount of mail usually received on or about April 15th, a serious question arose as to the timeliness of the application. The taxpayer's attempted explanation by a series of letters, however, tends to cast doubt upon the timely filing of the application. Although the application was sworn to on April 14, 1958, the taxpayer sent a letter stating in effect that the application was mailed together with an income tax return for a later year and forwarded under cover of a letter dated April 16, 1958. This inconsistency was further complicated by a letter from the taxpayer's secretary which stated that the application was mailed together with the 1957 return on April 14, 1958. However, a review of the letter

dated April 10, 1958 forwarding the return does not mention any enclosed application for refund. The taxpayer's presence or the presence of the person mailing the application was, therefore, necessary in order to help resolve that question. However, the taxpayer defaulted at the hearing, subsequently waiving the same and requesting a determination on the record.

I am, therefore, of the opinion that the taxpayer's application should be denied. Kindly return the file after disposition.

/s/

MARTIN SCHAPIRO
Hearing Officer

/s/

E. H. BEST
Approved

MS:ca
Enc.

September 22, 1958

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

FRANCIS J. REID

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEAR 1955

Francis J. Reid having duly filed an application for refund of personal income taxes for the calendar year 1955 and the taxpayer having mailed a letter to the State Tax Commission waiving the hearing and requesting a review of the matter, and the record including the testimony taken at the hearing having been duly examined and considered,

The State Tax Commission finds:

(1) That the taxpayer filed a New York State personal income tax return for the calendar year 1955 on April 15, 1956; that the taxpayer thereafter filed an application for refund of a portion of such personal income taxes for the calendar year 1955, which application was sworn to by the taxpayer on April 14, 1958 and bears a notation that it was received in the mail room of the Department of Taxation and Finance on April 22, 1958.

(2) That the taxpayer's application for refund was denied on the ground that said application was not filed within two years of the due date of the filing of the return, that is on or before April 15, 1958 and was, therefore, untimely; that the taxpayer filed a demand for the hearing and after defaulting at a hearing scheduled by the State Tax Commission on February 5, 1963, requested a review of the matter without a hearing.

(3) That on April 15, 1958, the State Tax Commission received a New York State income tax return for the calendar

year 1957 a period subsequent to the year under review together with a forwarding letter dated April 10, 1958; that the forwarding letter did not refer to any application for revision or refund; that, thereafter, the taxpayer wrote a letter to the State Tax Commission stating that the application for refund for the year 1955 was mailed on that date; that such date, however, was prior to April 14, 1958, the date that the application for refund was sworn to be the taxpayer (see finding of fact No. 1); that subsequently, one Marion E. McGibbon, the taxpayer's secretary, wrote a letter stating therein that both the aforesaid 1957 income tax return for the year 1957 and the application for refund for the year 1955 were mailed by her to the State Tax Commission on April 14, 1958; that, however, as aforesaid, the letter dated April 10, 1958 which forwarded the 1957 income tax return did not refer to any enclosed application for refund.

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

DETERMINES

(A) That the taxpayer has failed to file an application for revision or refund within two years from the date of the filing of the return as required by section 374 of the Tax Law.

(B) That, accordingly, no recomputation, revision or resettlement of the taxes can be made and that the application for revision or refund is hereby denied.

DATED: Albany, New York this 18th day of October , 1965 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner