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Income Tax Determinations
A-Z
Steiner, Grace

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy and [illegible]

FROM: Francis V. Dow, Hearing Officer

SUBJECT: Grace Steiner, application for revision or refund of an assessment of personal income taxes for the years 1957 and 1959

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

The issue involved is whether payments received by the taxpayer under a separation agreement are taxable to her.

The taxpayer entered into a separation agreement on March 10, 1948 which provided for payments for the support and maintenance of her and a child of the marriage. The agreement did not fix any part of the payments as a sum payable for the support of the child only. An assessment was issued against the taxpayer for the year 1957 on the ground that the taxpayer failed to report the amount of $4,700.00 received by her under the separation agreement during that year and assessed tax, penalty and interest in the sum of $112.59 (Assessment No. B-[illegible]). An assessment (Assessment No. B-[illegible]) was issued for the year 1959 on the basis that the taxpayer received $4,[illegible] under the separation agreement during 1959 which she also failed to report, and assessed tax, penalty and interest in the sum of $114.[illegible].

The taxpayer contends that the amendment to section 359 subdivision 2 of the Tax Law effective April 4, [illegible] providing that periodic payments received by a wife under a separation agreement are includible in her gross income, does not have retroactive effect so as to apply to agreements executed before its effective date. She further contends that such a construction would result in an impairment of a contractual obligation and that it is unfair, unjust and works an undue hardship to shift the tax burden on the payments from her husband to her.

Chapter 360 of the Laws of [illegible] was the Department bill which amended section 359 subdivision 2 of the Tax Law. It substantially conformed New York law to the Federal law although section 71 of the

Internal Revenue Code limited itself to payments made under separation agreements executed after August 16, 1954. Prior to the enactment of the 1954 Internal Revenue Code, only payments under a separation agreement incidental to a divorce or separation decree were includible in the wife's gross income under Federal Law.

The 1956 amendment to section 359 subdivision 8 of the Tax Law was made applicable to returns commencing on or after January 1, 1956. It was supplemented by 20 NYCRR 142.1[illegible]. The law requires the inclusion in the gross income of the wife of periodic payments received by her in any taxable year beginning on or after January 1, 1956. Neither the law nor the regulation excludes payments under separation agreements executed prior to January 1, 1956.

The Legislature did not exceed its power. Judge Lehman in People ex rel. Beck & Co. v. Graves, 280 N.Y. 405, stated, "The [illegible] upon the legislative power to impose a tax excludes the power to give retroactive effect to a tax law. Thus, only a retroactive application of a tax law which would result in the taking of property arbitrarily is beyond the power of any Legislature."

The taxpayer's contention that section 359 subdivision 8 is unconstitutional because it impairs a contractual obligation is not sustainable. A stipulation in the contract cannot prevail over the power of a state's taxing power or prescribe who shall be under a duty to the state to pay it nor fix the time and mode of payment even though the parties to the contract as between themselves, shall ultimately bear the tax. This has been repeatedly held by the U.S. Supreme Court in respect to the contracts and their subordination to the taxing power of the states (see Hanson v. Vinnecomb, 57 Supreme Court 70, 299 U.S. 23, 81 L. ed. 25).

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

/s/ FRANCIS V. DOW

Hearing Officer

FVD:lb
Enc.
[illegible] 21, 1966 (Dec. 1, 1966)

/s/ MARTIN SCHAPIRO

Approved

/s/ S. HECKELMAN

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

GRACE STEINER

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS 1957 AND 1959

The taxpayer herein having duly filed applications for revision or refund of personal income taxes imposed under Article 16 of the Tax Law for the years 1957 and 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York, before Francis V. Dow, Hearing Officer, at which hearing the taxpayer was represented by counsel, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Grace Steiner, a resident of the State of New York, entered into a separation agreement with her husband on March 19, 1948 which provided for the support and maintenance of her and a child of the marriage who was then eleven years of age and did not fix any part of the payments as a sum payable for the support of the child only; that pursuant to the separation agreement the taxpayer received $4,[illegible] in 1957 and $4,[illegible] during the year 1959; that the taxpayer did not file a New York income tax return for 1957 or 1959; that the taxpayer had no other income during those years.

(2) That Chapter [illegible] of the Laws of 1956 enacted April [illegible], 1956 amended Section [illegible] of the Tax Law to require the wife to include in her gross income periodic payments received by her in any taxable year beginning on or after January 1, 1956.

[illegible]

[illegible] S[illegible]

[illegible] 6th [illegible] December [illegible]

[illegible]

/s/ JOSEPH H. MURPHY

[illegible]

/s/ JAMES R. MACDUFF

[illegible]