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1967 Income Tax Determinations
BUREAU OF LAW

MEMORANDUM

Schultze, Wm. T. A-2

TO: Commissioners Murphy, Macduff and Conlon

FROM: Vincent P. Molineaux

SUBJECT: William T. Schultze
Application for refund of personal
income tax under Article 15 of the
Tax Law for the year 1957.

A hearing on the above matter was held before me
October 27, 1966.

The question involved is whether a nonresident
petitioner may obtain a refund of overpayment of withholding
tax on an application filed more than two years after payment.

Petitioner is a resident of New Jersey and a salesman
for A. O. Smith Company. His territory is the eastern quarter
of the United States and Europe. He has office space at the
company's offices in New York and Georgia.

New York State income tax of \$213.94 was withheld
for 1957 and paid to New York by his employer on or before
April 15, 1958. An additional amount of \$33.05 was requested
from the employer by the Income Tax Bureau and was paid
December 8, 1960.

Petitioner applied for refund of \$176.40 for 1957
based upon allocation of wages. The computation of allocation
of days was provided by the employer and appears correct.
However, no return was filed by the taxpayer prior to the
filing of the application. The application was filed April 12,
1961, which was more than two years after the first payment of
\$213.94 and less than two years after the second payment of
\$33.05.

Refund of the payment of \$33.05 was offered by the
Income Tax Bureau if petitioner would reduce the refund claim
to that amount. Petitioner stood on his demand for hearing
but at the hearing he was not represented by an attorney or
accountant and only claimed that since the State had received
an overpayment it should be refunded to him.

In view of the requirement of section 374 of the
Tax Law that applications for refund must be made within two

years of payment, or the filing of a return, whichever is earlier, I recommend that the determination of the Tax Commission in granting a refund of \$33.05 be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

~~Deputy Director~~

VPM:ps

February 3, 1967

Enc. (Feb, 1967)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

WILLIAM T. SCHULTZE

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1957

The taxpayer having filed an application for revision or refund of taxes paid under Article 16 of the Tax Law for the calendar year 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 27th day of October, 1966 before Vincent P. Melineux, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That the taxpayer was a nonresident of the State of New York during the year in question.
- (2) That taxpayer for all of the year 1957 was employed by A. O. Smith Corporation of 250 Park Avenue, New York 17, New York as an outside salesman. His territory was the eastern quarter of the United States and Europe and he had office space in the corporation's offices in New York City and Atlanta, Georgia.
- (3) That the corporation withheld and paid to the State of New York on or before April 15, 1958 the sum of \$213.94 for personal income tax for the year 1957. That an additional

amount of \$33.05 was paid by the corporation with their letter to the Tax Commission of December 8, 1960.

(4) That application for revision or refund for the year 1957 was filed by the taxpayer April 12, 1961 showing tax due of \$70.59 for the year 1957 based upon allocation of days worked within and without the State of New York and demanding a refund of \$176.40 and that no return was filed by the taxpayer prior to the filing of the application.

(5) That the application for revision or refund was filed more than two years after payment of the amount of \$213.94 and less than two years after payment of the amount of \$33.05.

(6) That a schedule of allocation of days worked by the taxpayer within and without the State was submitted by the employer on April 6, 1961; that such schedule properly reflects the days worked in and out of the State by the taxpayer for the year 1957.

Based upon the foregoing findings, the State Tax Commission hereby,

DETERMINES:

(A) That overpayment of \$176.40 of personal income tax for the year 1957 was made on behalf of the petitioner, William T. Schultze.

(B) That application for refund with respect to payment of \$213.94 was not made within the time authorized by section 374 of the Tax Law.

(C) That application for refund with respect to the payment of \$33.05 was made within the time authorized by section 374 of the Tax Law.

(D) That petitioner is entitled to a refund in the amount of \$33.05 without interest and

IT IS SO ORDERED

Dated: Albany, New York this 3rd day of March , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER