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Income Tax Determin. A-2
Cooper, Sidney

STATE OF NEW YORK
STATE TAX COMMISSION

See also
Income Tax Determinations
A-2
Appel, Charles J.
& Sylvia
(memo. 10/15/68)

IN THE MATTER OF THE PETITION

OF

SIDNEY COOPER

FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR THE
YEAR 1962

Sidney Cooper, having filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1962 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y., on the 3rd day of November, 1963, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State resident income tax return for the year 1962 in which he reported salary income of \$9,625.10; that, in addition, the taxpayer reported gross profit from accounting in the amount of \$24,124.64; that the taxpayer's income was reported on a cash calendar year basis; that attached to his return, the taxpayer submitted a statement containing a schedule of income spread-back for a period of 94 months from 1958 through 1962 and allocated a portion of the income received in 1962 in the amount of \$2,530.92; that the taxpayer computed his New York State income tax in the amount of \$899.63 based upon the spread-back of income; that he deducted New York

tax withheld in the amount of \$391.02 and payment of New York estimated tax in the amount of \$19.22.

(2) That on October 5, 1964, the Department of Taxation and Finance issued a Statement of Audit Changes against the taxpayer for the year 1963 recomputing the tax liability by including the entire amount of accounting fees received by the taxpayer in 1962 upon the ground that the provisions of Section 1301(a) of the Internal Revenue Code relating to income averaging which permits alternative income tax computation relating to the spread-back of long term income does not apply to Article 22 of the Tax Law; that credit claimed in the amount of \$19.22 was disallowed on the ground that said amount was paid as additional tax due on taxpayer's 1961 New York State income tax return; that additional tax was imposed in the amount of \$369.12, plus interest of \$32.99 for a total of \$402.11 and a Notice of Deficiency issued therefor.

(3) That during the year 1962 and prior thereto, the taxpayer was and still is employed as an auditor by Allied Stores Corporation; that the taxpayer is also employed as assistant controller for B. Gerts, Inc., a subsidiary of Allied Stores Corporation; that in 1958, the taxpayer entered into agreements with 88 to 100 persons to represent them to recover income tax refunds from the United States Treasury Department in connection with income tax returns filed by them; that the agreement between the taxpayer and said individuals provided that the taxpayer was to receive 33 1/3% of any amounts refunded to said individuals; that the taxpayer claims to have rendered services on behalf of said individuals from 1958 through 1962; that said fees were received by the taxpayer in 1962; that the gross profit in connection with said fees amounted to \$24,124.64; that the taxpayer allocated \$2,530.92 of said fees to 1962.

(4) That the taxpayer, Sidney Cooper, allocated a portion of the income received by him in the sum of \$25,000 on the Federal income tax return filed by the taxpayer for the year 1962 in accordance with the income averaging provisions contained in Section 1301(a), et. seq., of the Internal Revenue Code and Section 1.1301-1 of the Federal Regulations.

(5) That at the hearing the taxpayer presented two cancelled checks both dated April 4, 1962 payable to New York State Income Tax Bureau each in the amount of \$19.22; that one check was additional tax due on taxpayer's State return for 1961 and the other as payment of estimated tax for 1962.

(6) That the taxpayer contends that the New York State Tax Commission is bound by the provisions of the laws of the United States relating to the determination of income for Federal income tax purposes and that the provisions of Section 1301(a) of the Internal Revenue Code in effect for tax years prior to 1962 must be applied in connection with the New York State income tax return of the taxpayer for the year 1962.

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

HOLDING:

(A) That Section 612(a) of the Tax Law provides that the New York adjusted gross income of a resident individual means his Federal adjusted gross income with certain modifications; that there is no provision for modification in accordance with Section 612 of the Tax Law involving the spread-back or the averaging of income for a period of years; that the income averaging provisions contained in Section 1301(a), et. seq., of the Internal Revenue Code in effect for tax years prior to 1962, relates to the adjustment affecting the computation of the Federal tax itself

rather than the amount of Federal adjusted gross income reportable for the taxable year and is a limitation upon the tax; that said adjustments were properly disregarded in computing the taxpayer's New York adjusted income for New York State income tax purposes.

(B) That the taxpayer was entitled to a credit of \$19.22 as more fully set forth in Finding (5) above; that the disallowance of such credit was erroneous; that the Notice of Audit Changes and Notice of Deficiency are hereby amended to correct the tax due from the taxpayer in the amount of \$349.90 with lawful interest thereon.

(C) That, accordingly, the Statement of Audit Changes and Notice of Deficiency made against the taxpayer for the year 1963, except as modified in accordance with paragraph (B) above, are correct and do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayer for redetermination of a deficiency or for refund of personal income taxes for the year 1963, except as herein modified, he and the same is hereby denied.

Dated: Albany, New York on this 22nd day of November , 1968.

STATE TAX COMMISSIONER

/s/

JOSEPH H. MURPHY

Commissioner

/s/

BRUCE

A. B. MANLEY

Commissioner

Commissioner