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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determination*  
*A-2*  
*Holzer, Herbert*

TO: Commissioners Murphy and Manley

FROM: Francis X. Boylan, Hearing Officer

SUBJECT: Herbert Holzer, Determination on  
Default at Formal Hearing; Personal  
Income Taxes, Article 16; 1957

There was a failure of appearance by the taxpayer or his attorney, Henry Mark Holzer, Esq., at the hearing scheduled May 4, 1965 at New York, New York. At an earlier formal hearing scheduled in January, 1965 there also was a nonappearance. The nonappearance at the instant hearing is held to have constituted a default.

The additional assessments for the year 1957 were based on Federal changes made on audit for that year. The additional income consisted of \$2,750.00 made up of \$2,050.00 in unreported taxable dividend income, and \$700.00 in disallowed contributions. There is a report of the Federal audit in the folder, which supports the additional assessments made.

The assessments are authorized under provisions of Tax Law sections 367.2 and 373. Tax Law section 367.2 requires the taxpayer to report any Federal changes and to file therewith an amended return. Tax Law section 373 authorizes the State Tax Commission to make additional assessments in circumstances set forth in the section, that is, if a return of a taxpayer is in any essential respect incorrect, or if the taxpayer fails to make a return as required.

It is concluded that the assessments here were correct and lawful; and further that the taxpayer's nonappearance constituted a default.

Accordingly, it is recommended that the determination by the State Tax Commission be substantially in accordance with the proposed determination submitted.

/s/

FRANCIS X. BOYLAN

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Hearing Officer

FIB:ldd

December 2, 1966

12-6-68

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION OF :

HERBERT HOLZER :

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

Herbert Holzer, the taxpayer, having filed an application for revision or refund of additional personal income taxes assessed for the year 1957, and such application having been denied, and a hearing having been scheduled at the offices of the State Tax Commission at 80 Centre Street, New York, New York, on May 4, 1965, before Francis I. Boylan, Hearing Officer, and no appearance having been made by the taxpayer or by his attorney, Henry Mark Holzer, Esq., of New York, New York, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notice of additional assessment No. STF167630, dated August 22, 1960, the State Tax Commission restated the taxable income of the taxpayer for the year 1957 by adding thereto additional taxable income in the amount of \$2,750.00, assessing additional normal income tax thereon, in the amount of \$188.36. This additional income was disclosed on a field audit of the taxpayer's related Federal income tax return for 1957 pursuant to which contributions claimed in the amount of \$760.00 were disallowed and additional dividend income in the amount of \$2,100.00, less \$50.00 excluded, was charged to the taxpayer.

(2) These aforesaid Federal changes made in the taxpayer's net income for the year, required by provisions of the Tax Law (Tax Law section 367.2) to be reported by the taxpayer to this Department in fact had not been so reported according to the Department's records.

(2)

(3) By an application for revision or refund sworn to the 17th of February, 1961, the taxpayer stated in part: "the alleged \$2,100.00 of dividend income, upon information and belief, was not in fact received by me and resulted from a transfer of stock by me to a corporation of which I was a stockholder for purpose of reissue to another who never accepted the stock." By letter, dated August 1, 1961, this Department denied the said application for revision or refund affirming that the assessment was correctly issued in accordance with provisions of section 367 of the Tax Law, and that it was based on a Federal audit of the taxpayer's income tax return for the year 1957. A report of adjustments to net income by Federal audit (Form 1040.2), of record with this Department sets forth the said Federal changes so reported.

(4) An informal hearing was scheduled on June 16, 1964, at which neither taxpayer nor his attorney appeared. By letter dated June 18, 1964, the taxpayer's attorney stated that the informal hearing was being waived, and demanded a formal hearing. A formal hearing was scheduled, first on January 7, 1965, at which no appearance was made by taxpayer or his attorney, and thereafter the instant hearing was scheduled on May 4, 1965. The taxpayer was found to have been in default at the last said hearing, upon his failure to appear.

Upon the foregoing facts and findings and all the evidence herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the additional assessment of taxes for the year 1957, set forth in paragraph (1) hereof, was correct and was lawful pursuant to provisions of Tax Law sections 367.2 and 373. Tax Law section 367.2 requires a taxpayer to report to this Department any changes made in his Federal taxable income, and to file an amended

(3)

return therewith; and Tax Law section 373 authorizes the State Tax Commission to make an additional assessment where the return of the taxpayer is incorrect, or where the taxpayer fails to make a return required.

(B) Accordingly, the additional assessment in the amount of \$188.38 as of August 22, 1960 is affirmed. This amount is subject to interest to the date of payment thereof, and to penalties if any.

And it is So Ordered.

Dated at Albany, New York,  
this 9th day of  
December 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY  
President

/s/

A. BRUCE MANLEY  
Commissioner

Commissioner