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MEMORANDUM

Income Tax Determinations
A-2
Lall, Arthur S. &
Betty G.

TO: The State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: ARTHUR S. & BETTY G. LALL
Petition for a Redetermination
of a Deficiency or for Refund
of Personal Income Taxes under
Article 22 of the Tax Law for
the Year 1964

A hearing on the above matter was held before me at
80 Centre Street, New York, New York on September 19, 1967.

This is a Federal Substantiation Audit case.

The issue is whether certain payments made to a former
wife of Arthur S. Lall qualify for deduction as periodic alimony
payments.

Arthur S. Lall is a citizen of India with permanent
resident status in the United States since 1963. He was married
in India in 1936 and was separated in 1949.

Lall came to the United States in 1951 as consul general
of India in New York City and remained in that position until
1954. His wife and daughter came to New York to have the daughter
attend school here. Lall continued to support them but taxpayer
and the former wife did not reside together.

From 1954 to 1959 Lall represented India at the United
Nations in New York.

From 1959 to 1962 Lall was Governor of the International
Atomic Energy Agency of the United Nations with headquarters in
Vienna, Austria, and ambassador to Austria.

From 1961 to 1963 he held other international positions
with ambassadorial rank.

Up to 1963 taxpayer was exempt from tax in the United
States, India and other countries and the question of alimony
payments as tax deductions were of no concern.

In August 1963 he married the taxpayer, Betty G. Lall, his present wife, a United States citizen, and came to the United States as a permanent resident and now is a professor at Columbia University. His wife teaches at Cornell.

Taxpayer was married to his former wife in 1936 and they were separated in 1949 at which time taxpayer testifies he entered into an oral agreement, known to both families, that he would continue to provide for his wife's support. He has since continued to make regular monthly payments up to and including the year in question, 1964.

Taxpayer and his former wife were divorced July 6, 1963 in Geneva, Switzerland. The decree makes no mention of alimony or other payments by taxpayer to his divorced wife.

On July 8, 1963, prior to his second marriage taxpayer addressed a letter to his former wife stating that he would pay to her from September 1, 1963 for his lifetime the sum of \$210 U. S. or 1,000 Indian rupees per month. The document is also signed by the former wife. No mention is made of a prior existing agreement.

At the hearing taxpayer testified that he had served as a magistrate and judge in India from 1934 to 1940 and was trained in both criminal and civil law and that under the laws of India his oral agreement for support of his former wife was subject to proof and enforcement and that it was based entirely upon the marital relationship but that such payments would not be enforceable without the known oral agreement, and under litigation the appropriate amounts would be determined on the basis of the husband's financial status.

In support of his claim that the payments to his former wife qualify for deduction as periodic alimony payments the petitioner cites Fixler v. CIR, 25 TCM 1313 in which the Director of Internal Revenue has acquiesced. Prior to their divorce, Maurice and Ethyl Fixler, Illinois residents entered into an oral agreement in Illinois, pursuant to which agreement he was to pay her \$50.00 a week for the rest of her life, provided that if she remarried the payments were to be reduced to \$25.00 a week. Ethyl did not appear in the divorce action and permitted a decree to be entered against her which dissolved the marriage and forfeited and barred any claim Ethyl had for dower, homestead, alimony and other property rights by reason of her marriage. Maurice later remarried and shortly thereafter he and Ethyl reduced the oral agreement to writing. The Commissioner disallowed the claimed deductions for the reason that

the "obligation to pay alimony was not imposed upon or incurred by you under a written instrument incident to divorce."

In deciding for the petitioner the Court pointed to the words of sections 22(k) and 23(u) (IRC 1939) which provide for a deduction by the husband if he makes payment to his divorced wife "in discharge of * * * a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband * * * under a written instrument incident to such divorce or separation,". The Court pointed out that under Illinois law the husband was obligated to support and maintain his wife; that this obligation survived the divorce under Illinois law, and that the later reduction of the oral agreement to writing converted such oral agreement to a written instrument incident to such decree.

It would appear that in the present case the legal obligation of the husband has been adequately demonstrated and that the written instrument while not executed at the time of the divorce is incident to it in that it clarifies the responsibility of the husband based upon the former marital relationship.

Based upon the foregoing, I recommend that the decision of the Tax Commission granting the petition for redetermination be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

Hearing Officer

December 19, 1967
VPM:nn
Enc.

1-16-68

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

ARTHUR S. AND BETTY G. LALL

**FOR REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX
LAW FOR THE YEAR 1964**

Arthur S. and Betty G. Lall having filed a petition for redetermination of a deficiency and for refund of personal income tax under Article 22 of the Tax Law for the year 1964 and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 19th day of September 1967 before Vincent P. Molineaux, 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 taxpayers filed a New York State resident return of income for the year 1964 on which the amount shown to be due was paid.

(2) That the State Tax Commission issued a notice of deficiency for the year 1964 on the ground that the amount of \$2,520.00 paid to a former wife of Arthur S. Lall does not qualify as periodic payments of alimony.

(3) That taxpayer Arthur S. Lall is a citizen of India with permanent resident status in the United States since 1963. He was married in India in 1936 and was separated in 1949.

(4) That taxpayer Arthur S. Lall came to the United States in 1951 as consul general of India in New York City and remained in

that position until 1954. His wife and daughter came to New York to enable the daughter to attend school here. Lall continued to support them but taxpayer and the former wife did not reside together.

(5) That from 1954 to 1963 taxpayer represented India in the United Nations at New York, was Governor of the International Atomic Energy Agency of the United Nations in Austria and held other international positions with ambassadorial rank and consequently, up to 1963 was exempt from tax in the United States, India and other countries, and the question of alimony payments as tax deductions were of no concern.

(6) That in August 1963 Arthur S. Lall married the taxpayer Betty G. Lall, a United States citizen, and came to the United States as a permanent resident and now teaches at Columbia University. His wife teaches at Cornell.

(7) That in 1949 taxpayer as part of the separation from his former wife entered into an oral enforceable agreement of support by which he was required to make periodic payments for the support of his former wife and he has since continued to make regular monthly payments to his former wife up to and including the year 1964.

(8) That taxpayer and his former wife were divorced July 6, 1962 in Geneva, Switzerland and the decree makes no mention of alimony or other payments by taxpayer to the divorced wife.

(9) That on July 6, 1963 taxpayer, Arthur S. Lall, addressed a letter to his former wife stating that he would pay to her from September 1, 1963 for his lifetime \$210 U. S. or 1,000 Indian rupees per month and the document was also signed by the former wife and no mention is made of a prior existing agreement.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

(A) That the petitioner has made the payments in question in discharge of a legal obligation incurred by the husband under a written instrument incident to a divorce.

(B) That the payments were properly deductible as alimony payments.

(C) That the taxpayers' petition for redetermination of the deficiency for the year 1964 is granted and the determination of deficiency for the said year is cancelled in full and any amount paid thereunder shall be refunded.

Dated: Albany, New York this 19th day of January, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~SECRETARY~~

Bruce Masley

~~COMMISSIONER~~

~~COMMISSIONER~~