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Income Tax Determinations
A - Z
Rose, Benjamin L.
and Anna W.

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION
OF
BENJAMIN L. AND ANNE W. ROSE
FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR THE
YEAR 1963

See also
Inc. Tax Determinations
A - Z
Appel, Charles F.
& Sylvia
(memo 10/15/68)

The above-named taxpayers having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963, and a notice of hearing having been mailed to the taxpayers on December 26, 1967 scheduling a hearing to be held at the office of the State Tax Commission, 80 Centre Street, New York, N.Y., on the 29th day of January, 1968 at 11 a.m. before Solomon Sica, Hearing Officer of the Department of Taxation and Finance and the taxpayers having failed to appear at the said hearing and having written to the hearing officer advising him that they would not appear but requested that the matter be decided on the record as it is presently constituted, and the matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That Benjamin L. Rose and Anne W. Rose, his wife, filed a joint New York State resident income tax return for the year 1963 in which the taxpayer, Benjamin L. Rose reported wages received in the amount of \$10,547.60; that the taxpayers reported their income on a cash calendar year basis; that in addition, the taxpayer, Benjamin L. Rose, indicated on said return that he had

received in the year 1963 legal fees amounting to \$32,500 for services alleged to have been rendered for the period from 1935 through 1962; that the taxpayer computed the tax in the amount of \$841.40 on the basis of an allocation of the aforementioned income in accordance with Section 1301(a) of the Internal Revenue Code and requested a refund on said return in the amount of \$2,034.07.

(2) That on January 18, 1965, the Department of Taxation and Finance issued a Statement of Audit Changes against the taxpayer for the year 1963 recomputing the tax liability on the ground that the Federal provisions relating to spread-back or long-term fees or employment income are not applicable under the New York State Income Tax Law and that the entire income received in 1963 including the fees of \$32,500 was taxable; that the New York personal income tax computed to be due from the taxpayers amounted to \$2,923.95; that the taxpayers were credited with the total tax withheld and paid in the amount of \$2,873.47; that there was imposed additional New York personal income tax due in the amount of \$50.48, plus \$2.30 interest for a total of \$52.78, and, accordingly, a Notice of Deficiency was issued therefor.

(3) That during the year 1963 and prior thereto, the taxpayer was and still is an attorney admitted to practice law in the State of New York; that in 1963, the taxpayer received legal fees amounting to \$32,500 in connection with a legal matter for which he rendered services for the period from 1935 to and including December, 1962.

(4) That the taxpayer, Benjamin L. Rose, allocated a portion of the fees received by him in the sum of \$32,500 on the Federal income tax return filed by the taxpayers for the year 1962

in accordance with the income averaging provisions contained in Section 1301(a), et. seq., of the Internal Revenue Code in effect for tax years prior to 1964.

(5) 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 years prior to 1964 must be applied in connection with the New York State income tax return of the taxpayer for the year 1963.

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

DECIDES:

(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 applicable to tax years prior to 1964 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 taxpayers' New York adjusted income for New York State income tax purposes.

(B) That, accordingly, the Statement of Audit Charges and Notice of Deficiency made against the taxpayers for the year 1963 are correct and do not include any tax or other charges

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which could not have been lawfully demanded; that the petition of the taxpayers for redetermination of a deficiency or for refund of personal income tax for the year 1963 be and the same is hereby denied.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

COMMISSIONER