

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

MEMORANDUM

*Income Tax Determinations**A-Z**Zimmer, Isaac and Lilyan*

TO: **State Tax Commission**

FROM: **Alfred Rubinstein, Hearing Officer**

SUBJECT: **Petition of Isaac and Lilyan Zimmer
for 1961 and 1962 (File No. 2-3613396)**

A hearing on the above-entitled matter was held before me at 80 Centre Street, New York, New York, on June 3, 1968. Appearances and exhibits introduced were as noted on the stenographic transcript.

The issue involved a claim for refund asserted under the special refund authority contained in subsection (d) of Section 697 of the Tax Law for erroneous inclusion of New York City Police Department pension payments in New York income.

The taxpayers filed resident personal income tax returns for 1961 and 1962, reporting Federal adjusted gross income of \$9,565.73 for 1961 and \$9,865.71 for 1962, which included New York City Police Department pension payments received by Isaac Zimmer, a retired policeman, of \$2,940.48 in 1961 and \$2,940.50 in 1962 from which no New York income tax was withheld. No modification was made on either return in reduction of Federal adjusted gross income for the pension payments, which were reported on schedules on both returns as "Pension and Annuity Income". Taxpayers paid income taxes of \$211.62 for 1961 and \$196.67 for 1962.

On July 11, 1966, the taxpayers filed claims for refund of the voluntary overpayments in the amounts of \$132.94 for 1961 and \$129.95 for 1962, on the ground that they had included for such years, in New York adjusted gross income, the amounts received as pension payments from the New York City Police Department under a mistake of fact. Taxpayers' claims for refund were denied on December 16, 1966 as untimely under Section 687(a), having been filed more than three years after the returns were filed, and on a finding that subsection (d) of Section 697 did not apply because, " * * * it would have been necessary to conduct correspondence with the taxpayer to ascertain the nature of the pension." Taxpayers filed a petition for refund on December 28, 1966 requesting total refund of \$261.89 plus interest.

Subsection (c)(3) of Section 612 of the Tax Law provides for modification in reduction of Federal adjusted gross income by subtraction of pensions to officers and employees of the State, its subdivisions and agencies to the extent includible in gross income for Federal income tax purposes. Regulation 20.612-1(c) provides for inclusion in such modification of pensions paid to municipal officers and employees. Unquestionably, modification on the returns for New York City Police Department pension payments to the taxpayers would have been proper.

The sole question is whether refund may be made under subsection (d) of Section 697, which permits a refund to be made " * * * at any time, without regard to any period of limitations * . * . " when no question of fact or law is involved and monies have been paid under a mistake of fact.

Similar factual situations involving pensions arose under subdivision 3 of Section 373 of Article 16, the predecessor of subsection (d) of Section 697, and which is substantially similar, in the Matter of Chester J. Myers and the Matter of Glen S. Rosenqvist. In both cases refunds were directed (see Memorandum dated October 26, 1959 from Deputy Commissioner Hassell to Commissioner Murphy in Matter of Chester J. Myers, annexed), and the result should be the same in this case.

Accordingly, the taxpayers' petition should be granted to the extent of directing refunds in the amounts of \$132.94 for 1961 and \$129.95 for 1962, the amounts paid in error for such years. The decision of the Tax Commission should be substantially in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

Hearing Officer

AR:dv

Enc.

September 30, 1968

10/7/68

Oct. 26, 1959

BUREAU OF LAW

MEMORANDUM

TO: Commissioner Murphy

FROM: Deputy Commissioner Kassell

SUBJECT: Chester J. Myers (now deceased)
Applications for refund - 1945-1953
Proposed Determination

Sec. 373 sub 3

The proposed determination in the above matter has been sent to this Bureau for review. The issue is whether a refund should be allowed under section 373, subdivision 3, of taxes paid on constitutionally exempt pension payments, identified on each tax return only as "annuity", where applications for refund were not filed within two years of the filing of the returns.

Taxpayer was a retired employee of the New York State Department of Public Works. Although his returns for the years at issue only identified his New York State Retirement System payments as annuity, a copy of his 1945 return, submitted to replace the destroyed original, states he was a retired employee of the New York State Department of Public Works. (Pet. Ex. A) In addition, his 1955 return, upon which a refund was granted upon timely application, describes a payment identical in amount to certain of the ones at issue as "State annuity".

In Matter of Olga S. Rosenqvist, which presented a similar factual situation, after formal hearing the Commission, on April 1, 1959, allowed a refund under section 373, subdivision 3. In that matter, payments received from the New York State Teachers Retirement System were also only described as annuities on the returns. As that matter is indistinguishable from the instant one, in my opinion, the hearing officer's recommended denial of the refund, on the grounds questions of fact and law are involved, should not be followed and the refund should be allowed.

The taxpayer's file is being forwarded herewith.

Deputy Commissioner
and Counsel

October 26, 1959

Enc.
SH:EB

cc: Commissioner Clark
Commissioner Palestin
Deputy Commissioner Igoe

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....
IN THE MATTER OF THE PETITION

OF

ISAAC AND LILIAN EINHART

**FOR REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX
LAW FOR THE YEARS 1961 AND 1962**
.....

Isaac and Lilian Einhart 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 years 1961 and 1962, and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, at 80 Centre Street, New York, New York on June 3, 1966, at which hearing the taxpayer, Lilian Einhart appeared, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Isaac and Lilian Einhart filed joint personal income tax resident returns for the years 1961 and 1962; that for 1961, the taxpayers reported New York adjusted gross income of \$9,563.73 and paid personal income taxes thereon of \$111.02; that for 1962, the taxpayers reported New York adjusted gross income of \$9,843.71 and paid personal income taxes thereon of \$104.07; that included in the New York adjusted gross income of the taxpayers for 1961 was the sum of \$2,940.48 of pension payments received by Isaac Einhart from the New York City Police Department; that included in the New York adjusted gross income of the taxpayers for 1962 was the sum of \$2,940.30 of pension payments received by Isaac Einhart

from the New York City Police Department; that such pension payments received by Isaac Elnat, a retired New York City policeman, were included in Federal adjusted gross income reported by the taxpayers to the Treasury Department for 1961 and 1962; that no New York income tax deductions were withheld from such pension payments made to Isaac Elnat; that the amounts of such pension payments received by Isaac Elnat were not subtracted as a modification in reduction of Federal adjusted gross income for 1961 and 1962 by the taxpayers in arriving at their New York adjusted gross income reported for such years.

(2) That on July 11, 1966 the taxpayers filed claims for refund of voluntary overpayments of personal income taxes in the amounts of \$132.94 for 1961 and \$139.93 for 1962, contending that the pension payments received by Isaac Elnat during such years were included by the taxpayers in their New York adjusted gross income in error; that on December 16, 1966 the taxpayers' claims for refund were denied by the Income Tax Bureau as untimely, not having been filed within three years from the time the return was filed or within two years from the time the tax was paid, pursuant to subsection (a) of Section 607 of the Tax Law; that the Income Tax Bureau determined that taxpayers' claims for refund involved questions of fact precluding consideration under subsection (d) of Section 607 of the Tax Law.

(3) That the taxpayer, Isaac Elnat, had been employed by the New York City Police Department until his retirement on September 30, 1958, at which time he was awarded a pension of \$245.04 per month; that such pension was payable to Isaac Elnat as an employee of an agency of the City of New York, a municipal subdivision

of the State of New York; that on their returns for 1961 and 1962, the taxpayers omitted any notification in reduction of Federal adjusted gross income by subtraction of such pension payments in error; that on their returns for 1961 and 1962, the taxpayers listed receipt of such pension payments on schedule as "Pension and Annuity Income" and included such pension payments in New York adjusted gross income in error.

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

DECIDES:

(A) That the pension payments received by Isaac Simon from the Police Pension Fund, as a retired employee of the New York City Police Department in 1961 and 1962, were pensions paid to an employee of a subdivision of the State within the meaning of subsection (c)(3) of Section 612 of the Tax Law; that such payments in the amounts of \$2,940.48 for 1961 and \$2,940.50 for 1962 were included in taxpayers' New York adjusted gross income for such years on their returns, and personal income taxes paid thereon, under a mistake of fact within the meaning of subsection (d) of Section 607 of the Tax Law; that taxpayers' claim for refund of overpayment involves no question of fact or law within the meaning of subsection (d) of Section 607 of the Tax Law; that taxpayers' New York adjusted gross income for 1961 was \$6,625.23; that taxpayers' New York adjusted gross income for 1962 was \$6,925.21.

(B) That taxpayers' personal income tax liabilities for 1961 and 1962 are computed as follows:

1961

Federal Adjusted Gross Income	59,565.73
Modification for New York City	
Police Department Pension	2,510.68
New York Adjusted Gross Income	1,522.33
New York Itemized Deductions	1,522.33
Exemption	1,522.33
New York Taxable Income	57,521.42
Tentative Tax	\$ 101.68
Statutory Credit	88.98
Personal Income Tax	12.70
Tax Paid	11.68
Overpayment	1.02

1962

Federal Adjusted Gross Income	59,565.71
Modification for New York City	
Police Department Pension	2,510.68
New York Adjusted Gross Income	1,522.33
New York Itemized Deductions	1,522.33
Exemption	1,522.33
New York Taxable Income	57,521.40
Tentative Tax	\$ 91.72
Statutory Credit	88.98
Personal Income Tax	12.74
Tax Paid	10.67
Overpayment	1.07

(C) That, accordingly, the taxpayers' petition for refund be and the same is hereby granted and that there be refunded to the taxpayers, as and for overpayments of personal income taxes, the sum of \$132.94 for 1961 and \$129.95 for 1962, together with lawful interest, if any.

Dated: Albany, New York this 14th day of October, 1962.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

A. BRUCE MANLEY
COMMISSIONER

SECRETARY