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L-9 (8-68)

Income Tax Determin. A-Z

BUREAU OF LAW

MEMORANDUM

Goodman, Beatrice L. & Moses

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: MOSES GOODMAN
BEATRICE L. GOODMAN

Petitions for Redetermination of Deficiencies or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the Year 1963

Separate notices of hearing were mailed to each of the above-mentioned taxpayers on December 27, 1967 scheduling a hearing at the New York City office for February 1, 1968 at 3:30 p.m. The taxpayers defaulted in appearance.

The issue involved herein is the disallowance of itemized deductions for lack of substantiation and the allowance of standard deductions.

The taxpayers filed a joint Federal income tax return for 1963 in which they reported Federal adjusted gross income of $17,732.10 and itemized deductions amounting to $5,016.84. The income consisted of dividends, $5,510.94; interest income (mortgages $12,859.31 and savings bank interest $274.44) of $13,133.75; professional income of Moses Goodman from practice as physician, $87.41. The taxpayers also deducted long term capital loss of $1,000. They filed separate New York State nonresident returns on Form IT-209 for 1963 in which they indicated that they were New York residents for the period from January 1, 1963 to August 31, 1963. On said return, Moses Goodman and Beatrice Goodman reported New York income of $5,662.12 and $5,892.04, respectively and New York itemized deductions of $1,617.67 and $2,247.17, respectively. The itemized deductions consisted of contributions, interest expense, taxes, medical and dental expense and other expenses.

The taxpayers resided at 33 Everdell Road, East Rockaway, New York from January 1, 1963 to August 31, 1963. Thereafter they became residents of Florida. The New York income as reported by the taxpayers on their separate State income tax returns ~~were~~ for the period January 1, 1963 to August 31, 1963 while they were residents of the State of New York.

The taxpayers were requested to substantiate the itemized deductions claimed. They contend that their failure to do so was due to the loss of their records under circumstances beyond their control as a result of a hurricane. They were then requested to submit their work papers or other evidence to substantiate the deductions claimed but have failed to do so.

Separate statements of audit changes were issued against each of the taxpayers on April 18, 1967 disallowing the itemized deductions claimed by them. Standard deductions were allowed Moses Goodman in the amount of $150 and Beatrice Goodman in the amount of $516.17 on the basis of 8 months during which they were New York residents. Accordingly notices of deficiency were issued against the husband for $84.14 and against the wife for $77.56.

Section 1.274-5(c)(5) of the Federal Income Tax Regulations with respect to loss of records due to circumstances beyond the control of the taxpayer provides, in part:

> "Where the taxpayer establishes that the failure to produce adequate records is due to the loss of such records through circumstances beyond the taxpayer's control, such as destruction by fire, flood, earthquake, or other casualty, the taxpayer shall have a right to substantiate a deduction by reasonable reconstruction of his expenditures."

In the instant case, the taxpayers have failed to submit any evidence whatsoever to substantiate the itemized deductions by reasonable reconstruction of their expenditures. They have failed to submit secondary evidence such as affidavits or statements in substantiation of the itemized expenditures claimed.

I am of the opinion that the claimed itemized deductions were properly disallowed; that a standard deduction for the 8-month period of residency within the State was properly allowed.

For the reasons stated above, I recommend that the decisions in the above matters be substantially in the form submitted herewith.

SOLOMON SIES
Hearing Officer

SS:io/dc
Enc.

January 15, 1969
Sent to Commission 1/24/69

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION	:
OF	:
MOSES GOODMAN	:
FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1963	:

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Moses Goodman 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 said taxpayer on December 27, 1967 scheduling a formal hearing to be held at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 1st day of February, 1968 at 3:30 p.m. of that day before Solomon Sies, Hearing Officer of the Department of Taxation and Finance and the aforementioned taxpayer having defaulted in appearance, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Moses Goodman and Beatrice L. Goodman, his wife, filed a joint Federal income tax return for 1963 in which they reported Federal adjusted gross income in the amount of $17,732.10 and itemized deductions of $3,016.64; that they filed a New York State combined nonresident income tax return for 1963 (separate returns on Form IT-209) in which they indicated they were New York residents for the period from January 1, 1963 to August 31, 1963; that the taxpayer Moses Goodman reported

New York income in the amount of $5,662.12 and itemized deductions in the amount of $1,617.16; that the taxpayer Beatrice L. Goodman reported New York income in the amount of $5,892.04 and itemized deductions of $2,247.17; that the itemized deductions consisted of contributions, interest expense, medical and dental expense and other expenses.

(2) That during the period from January 1, 1963 to August 31, 1963 the taxpayers resided at 33 Everdell Road, East Rockaway, New York; that the New York income as reported by the taxpayers on their separate New York State income tax returns was for the period January 1, 1963 to August 31, 1963 while they were residents of the State of New York.

(3) That the taxpayer was requested to substantiate the itemized deductions claimed; that taxpayer contends that his failure to substantiate the itemized deductions is due to the loss of his records under circumstances beyond his control as a result of a hurricane; that the taxpayer was requested to submit his work papers or other evidence to substantiate the deductions claimed but has failed to do so.

(4) That on April 10, 1967, the Department of Taxation and Finance issued a statement of audit changes against the taxpayer, Moses Goodman, for the year 1963 disallowing the itemized deductions claimed upon the ground that he failed to substantiate such deductions; that a standard deduction was allowed for a period of 8 months (the period during which the taxpayer was a New York resident) in the amount of $150; that additional tax was imposed in the amount of $84.14 and a notice of deficiency was issued accordingly therefor.

(5) That the taxpayer has failed to submit any secondary evidence in the form by affidavits, statements or other proof in substantiation of the itemized deductions claimed.

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

DECIDES:

(A) That the taxpayer has failed to substantiate the itemized deductions claimed by him by a reasonable reconstruction and other proof of such expenditures; that the standard deduction allowed on the basis of 8 months during the period in which the taxpayer was a resident of the State of New York was proper.

(B) That, accordingly, the statement of audit changes and notice of deficiency issued against the taxpayer are correct; that the same do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayer for a redetermination of a deficiency or for refund of personal income taxes for the year 1963 be and the same is hereby denied.

Dated: Albany, New York this 3rd day of February, 1969 .

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY

PRESIDENT

/s/ A. BRUCE MANLEY

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

BEATRICE L. GOODMAN

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1963

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Beatrice L. Goodman 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 said taxpayer on December 27, 1967 scheduling a formal hearing to be held at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 1st day of February, 1968 at 3:30 p.m. of that day, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, and the aforementioned taxpayer having defaulted in appearance, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Manus Goodman and Beatrice L. Goodman, his wife, filed a joint Federal income tax return for 1963 in which they reported Federal adjusted gross income in the amount of $17,732.10 and itemized deductions of $5,016.64; that they filed a New York State combined nonresident income tax return for 1963 (separate returns on Form IT-209) in which they indicated they were New York residents for the period from January 1, 1963 to August 31, 1963; that the taxpayer Manus Goodman reported New York income in the amount of $5,662.12 and itemized deductions in the amount of $1,617.15; that the taxpayer Beatrice L. Goodman

reported New York income in the amount of $3,592.64 and itemized deductions of $2,297.17; that the itemized deductions consisted of contributions, interest expense, medical and dental expense and other expenses.

(2) That during the period from January 1, 1963 to August 31, 1963 the taxpayers resided at 33 Everdell Road, East Rockaway, New York; that the New York income as reported by the taxpayers on their separate New York State income tax returns was for the period January 1, 1963 to August 31, 1963 while they were residents of the State of New York.

(3) That the taxpayer was requested to substantiate the itemized deductions claimed; that taxpayer contends that her failure to substantiate the itemized deductions is due to the loss of her records under circumstances beyond her control as a result of a hurricane; that the taxpayer was requested to submit her work papers or other evidence to substantiate the deductions claimed but has failed to do so.

(4) That on April 10, 1967, the Department of Taxation and Finance issued a statement of audit changes against the taxpayer for the year 1963 disallowing the itemized deductions claimed upon the ground that said taxpayer failed to substantiate such deductions; that a standard deduction was allowed on the basis of 8 months (the period during which the taxpayer was a resident of the State of New York) in the amount of $326.17; that additional tax was imposed in the amount of $77.56, and a notice of deficiency was issued therefor.

(5) That the taxpayer has failed to submit any secondary evidence in the form of affidavits, statements or other proof in substantiation of the itemized deductions claimed.

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

DECIDES:

(A) That the taxpayer has failed to substantiate the itemized deductions claimed by her by a reasonable reconstruction and other proof of such expenditures; that the standard deduction allowed on the basis of 8 months during the period in which the taxpayer was a resident of the State of New York was proper.

(B) That, accordingly, the statement of audit changes and notice of deficiency issued against the taxpayer are correct; that the same do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayer for a redetermination of a deficiency or for refund of personal income taxes for the year 1963 be and the same is hereby denied.

Dated: Albany, New York this 3rd day of February, 1969

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

COMMISSIONER