

Income Tax Determination
Olian, Harold **A-2**

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	Affidavit of Mailing
HAROLD OLIAN	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of PERSONAL INCOME	:	
Taxes under Article(s) 16 of the Tax	:	
Law for the year(s) 1957	:	

State of New York
County of Albany

PATRICIA WHITMAN, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 3rd day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Harold Olian the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Harold Olian, 1648 Stewart Avenue, New Hyde Park, NY and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
3rd day of July, 1969.

Grace E. Pritchard

Patricia Whitman

To.....Mr. Edward Rook.....

Prepared determination to be submitted to the
State Tax Commission. Memorandum of January
6, 1969 is attached.

5/12/69

A handwritten signature in dark ink, appearing to be 'F. X. Boylan', written in a cursive style.

From Francis X. Boylan

BUREAU OF LAW *Income Tax Determination*

A-2

MEMORANDUM

Olian, Harold

TO: Commissioners Murphy and Manley

FROM: Francis X. Boylan, Hearing Officer

SUBJECT: Harold Olian, Determination on waiver
of formal hearing; Personal Income Taxes,
Article 18, 1957

When the taxpayer was advised by the Department's letter of August 7, 1960 that a date would be set for a formal hearing in this matter he replied (by an endorsement on that letter) that he would not be able to attend and requested a review on the record of the additional assessment which is under consideration here.

The Department by letter dated May 2, 1960 had questioned the amount of the medical expense deduction taken, inquiring also whether there was not some duplication in the amounts claimed for these items. When its letter to the taxpayer went unanswered the additional assessment which revised the return was made. But although the taxpayer had made an itemized return and (except for a further inquiry whether there had been Federal change which is not material here) only the medical expense taken were challenged, the additional assessment allowed only the standard deduction of \$1,000.00 instead of revising the itemized deductions taken to the extent that they were disallowed. The additional assessment further disallowed a personal exemption claimed by taxpayer for his mother as a dependent a deduction which the letter of May 2, 1960 to the taxpayer had not questioned.

The taxpayer promptly protested the assessment by letter but the form IT-113 was not filed until April 1962, about a year later than Tax Law section 374 permits.

The question presented by this record pragmatically is whether the information in taxpayer's letter dated April 15, 1962 and that stated in his itemized return should not be considered in restating the assessment at this time, rather than affirming the additional assessment as made without any modification on the grounds that the application for revision or refund "on the form provided" (IT-113) (to which the letter was attached) was untimely made.

The proposed determination takes the view that the taxes at this time should be restated on the full information available. Tax Law sections 373.1, 373.6.

Tax Law section 373.1 permitted the Department to revise the taxpayer's return "if it is in any essential respect incorrect". The authority granted however would indicate that in the circumstances the return should have been revised less drastically on the basis of the itemized deductions taken less such as were disallowed rather than on the basis of a standard deduction, which was much less favorable. Further that there had been no indication that the personal exemption claimed for the taxpayer's mother was challenged. When an administrative body is given an area of discretion by statute, the limitations set by the statutory language have to be observed, and of the alternatives available to the administrative agency, the course taken must not run counter to the one that is reasonably indicated by the information available. Tax Law section 373.1; *Camperlengo v. the State Liquor Authority*, 317 AD 2d 342, 98 A.L.R. 2d 1116; *Burlington Truck Lines, Inc. v. the United States*, (U.S. Supreme Court, December 1962) 371 US 138, 9 L ed. 2d 207.

Tax Law section 373.6 has provided, since 1966, that the Tax Commission "may also abate of its own motion the unpaid portion of the assessment of any tax or any liability in respect thereto which is excessive in amount . . . or is erroneous or illegally assessed". There is no question but that this provision permits the Tax Commission to revise the assessment in accordance with the information available at this time, apart from whether or not the formal application for revision or refund was timely. Tax Law section 373.6, (see also Tax Law section 697(c) in Article 22.) It may be noted that the quoted language in Tax Law section 373 which originally was omitted from Tax Law section 697 because it would clearly permit revision after the "statute of limitations" had run, was finally approved of by the Department and incorporated into that section. (See memoranda in folder on Chapter 61, Laws of 1963, Senate Introductory No. 1304.)

The application for revision or refund on the form provided was not made within the time limits of section 374 and was about a year late. In the case of a demand for a hearing which comparably must be filed within 90 days, we have ruled in effect that while a demand in writing must be made within the time period as a mandatory requirement, the filing of "the form provided" within that time is only directory. (Memorandum Elizabeth Manning, March 8, 1964.) A comparable relaxation of the requirement for a filing of the form provided probably is allowable as to the requirement of Tax Law section 374 concerning the application for revision or refund. Even so, however, we have not relaxed the time requirement except when there was a substantial compliance, which is to say, when the filing was only a few days late.

However this may be, since it was somewhat overreaching of the Department to discard the taxpayers return and its itemized deductions, the more rational and responsible course at this time

is for the Department to consider the itemized return and the supplementary letter in restating the taxes due, pursuant to the authority of Tax Law section 373.6.

The actual restatement of the taxes made (by the hearing officer) is provisional, and should be reviewed by the proper persons in the Income Tax Bureau so that the expertise of that unit of the Department can restate the taxes in accordance with the standards of proof usually required of the taxpayer.

In these circumstances interest should be charged only as provided in the proposed determination, beginning 30 days after receipt of the determination herein. Tax Law section 379.2; compare Cooper-Smith v. Bragalini, 4 AD 2d 374.

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

/s/

FRANCIS X. BOYLAN

Hearing Officer

FXB:ldd

January 6, 1969

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
HAROLD OLIAN
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1957

DETERMINATION

Harold Olian, 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 the taxpayer having waived formal hearing and having submitted his case on the record, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notice of additional assessment No. B-813252, dated September 30, 1960, the State Tax Commission revised the return made by the taxpayer. The total gross income reported by the taxpayer in his return in the amount of \$9,814.81 was accepted, but a standard deduction of \$1,000.00 was allowed instead of the itemized deductions claimed by taxpayer in his return. An allowance of \$2,900.00 for personal exemptions in effect disallowed a further amount of \$400.00 claimed by taxpayer in the return as an exemption for his mother as a dependent. The resultant net income in the amount of \$5,914.81 was subjected to normal tax in the amount of \$205.74, and after crediting normal tax paid with the return in the amount of \$38.24, additional normal tax due in the amount of \$167.30 was assessed.

(2) Taxpayer in his return had taken as an itemized deduction for family medical expense a single item in the amount of \$1,400.00, and a further item of medical expense in the amount of \$35.00 for an

ophthamologist's fee; but by way of "other deductions" (Item 31d) he further listed certain expenses which included amounts for these items of medical expense, totaling \$1,453.00: Blue Cross, orthopedic shoes and glasses, dentist, drugs and prescriptions, vitamins and household drugs, and medical travel.

In his return taxpayer had taken a total personal exemption in the amount of \$3,300.00 reporting his mother, aged over 65, as a dependent.

(3) Before the additional assessment was made the Department by letter dated May 2, 1960 had asked the taxpayer to submit an itemized list of all medical expenses incurred and the amounts paid, and to indicate the expenses that could be substantiated by bills, receipts or cancelled checks, and it further asked for a report on any amount received from accident, health or hospitalization insurance; this letter had gone unanswered at the time the additional assessment was made.

(4) On receipt of the notice of additional assessment, the taxpayer by letter dated October 4, 1960 protested the additional assessment and requested form IT-113 (application for revision or refund). This form, verified April 16, 1962, was thereafter filed with the Department, more than two years after the date of the return (April 1958) and more than one year after the date of the additional assessment of September 30, 1960, and so was not filed within the time limitations set by Tax Law section 374. The filed form IT-113 was accompanied by a letter, dated April 15, 1962 in which the taxpayer undertook to explain the deductions taken.

With reference to the \$1,400.00 figure for family medical expense, the letter stated only that his wife had had a historectomy, requiring weekly and bi-weekly treatments, and that his son had

chronic upper respiratory illness and slight anemia. No report was made of any payments under health insurance policies, as had been requested.

The letter asserted that the taxpayer had met more than half the cost of support of his mother, claimed as a dependent, and listed individual claimed payments by check to a total of \$799.00.

(5) It is found that the claimed item of medical expense in the amount of \$1,400.00 was not adequately substantiated on the record.

(6) It is found that the exemption claimed by the taxpayer for the support of his mother is adequately substantiated and is allowable.

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

DETERMINES:

(A) That pursuant to provisions of Tax Law sections 373 and 374, which authorize the restatement of an assessment made, the taxes assessed by the notice of additional assessment set forth in paragraph 1 hereof, are restated as follows:

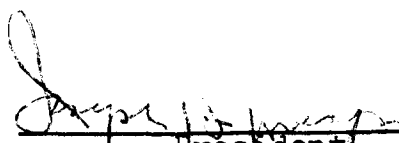
Total gross income	\$9,814.81
Deductions allowed	<u>3,550.31</u>
Net income	\$6,264.50
Personal exemptions	<u>3,300.00</u>
Net income	\$2,964.50
First \$1,000 at 2%	\$20.00
\$1,964.60 at 3%	<u>58.94</u>
Normal tax due	\$78.94
Less normal tax paid	<u>38.24</u>
ADDITIONAL NORMAL TAX DUE	\$40.70

The deductions above stated include \$1,390.27 in allowable medical expenses relative to income, pursuant to Tax Law section 360.15.

Pursuant to provision of Tax Law section 379.2, interest (as provided for in Tax Law section 376) is to be charged, beginning 30 days after service of notice of this determination.

Dated at Albany, New York,
this 24th day of June
1969.

STATE TAX COMMISSION



President



Commissioner



Commissioner