

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS OF
VINCENT A. THIEMANN
FOR REVISION OR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS
1955 AND 1956

Vincent A. Thiemann, having filed an application for revision or refund under Article 16 of the Tax Law for each of the calendar years 1955 and 1956, and a hearing having been held in connection therewith at the New York City office of the Bureau on June 19, 1964 at which the taxpayer appeared and testified, before Laurence S. Gifford, Hearing Officer, of the Department of Taxation and Finance, and the matter having been duly examined and considered, the State Tax Commission hereby finds:

1. That the taxpayer filed returns of income under Article 16 of the Tax Law for each of the calendar years 1955 and 1956; the 1955 return having been filed on or before the due date for filing thereof, namely, April 15, 1956, and the 1956 return having been filed on or before the due date for filing thereof, namely, April 15, 1957; that on each of such returns the taxpayer claimed itemized deductions, including the following specific deductions:

	<u>1955</u>	<u>1956</u>
Apportioned home expense	<u>\$132.99</u>	<u>\$132.01</u>
Sales taxes	\$221.10	\$224.40
Auto and gas taxes	89.00	89.00
Trans. & utility taxes	43.21	45.56
Misc. other taxes	<u>144.40</u>	<u>124.60</u>
Total other taxes	<u>\$497.71</u>	<u>\$483.56</u>

2. That on audit of such returns so filed, the Income Tax Bureau disallowed the amount claimed each year for apportioned home expense as not representing ordinary and necessary expenses within the meaning and intent of the Tax Law; that in addition the Income Tax Bureau disallowed \$200.00 of the total amount claimed for miscellaneous taxes, the disallowance being based upon the grounds that the total as originally claimed was excessive.

3. That based upon such disallowance, additional normal taxes under Article 16 of the Tax Law, be assessed against the taxpayer on March 4, 1959 in the amount of (\$11.95) for 1955 and \$11.95 for 1956.

4. That thereafter on April 14, 1959 the taxpayer filed applications for revision or refund whereby he requested the cancellation of additional taxes assessed for 1955 and 1956 (Paragraph No. 3 above); that in addition the taxpayer claimed on such applications a refund of original taxes paid in the amount of \$60.25 for 1955 and in the amount of \$63.49 for 1956, such refund claims being based upon the grounds that the taxpayer was entitled to additional deductions (in addition to the amounts claimed on returns filed) as follows:

	<u>1955</u>	<u>1956</u>
Additional deductions for miscellaneous taxes	\$1190.56	\$1281.79
Commutation expense	\$150.00	\$150.00

5. That the said 1955 application for revision or refund filed, as aforesaid, on April 14, 1959 was not filed within two years of the date of the filing of the 1955 return (Paragraph No. 2 above) but such 1955 application was filed within one year of the date of issuance of the additional 1955 taxes of \$11.95 on March 4, 1959; that the date of filing of the 1956 application (namely, on April 14, 1959) was within two years of the filing of the 1956 return and within one year of the date of issuance of the 1956 assessment.

6. That at the hearing it was not shown that the taxpayer incurred miscellaneous taxes, either in 1955 or 1956, in excess of the respective amount allowed in the tax computation reflected in the assessments here at issue, namely, in excess of \$297.71 for 1955 and \$283.56 for 1956.

7. That at the hearing it was not shown that any portion or either the so-called home expense or commutation expense claimed by the taxpayer represented ordinary and necessary expenses paid or incurred during the respective taxable years in carrying on his occupation; nor was it shown that any portion thereof was incurred or paid for the production or collection of taxable income.

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

DETERMINES:

That the taxpayer is not entitled to any deduction in computing net income under Article 16 of the Tax Law in addition to those respectively allowed in the recomputations of his tax liability for 1955 and 1956 as reflected in the assessments levied on March 4, 1959 (Paragraphs No. 2 and 3 above); that accordingly the taxpayer is not entitled to any revision or refund of taxes assessed and/or paid under Article 16 of the Tax Law for either of the years 1955 or 1956.

Dated: Albany, N. Y., July 25, 1969.

THE STATE TAX COMMISSION

Norman Gellman
Commissioner

Robert M. M. M. M.
Commissioner

Milton K. K.
Commissioner