

TAX

PERSONAL Income

ART.

16 SECS. 375

KEY WORDS

EXPENSES,
ORDINARY AND NECESSARY
FOR PRODUCTION OF INCOME;
CROSS FEES.
EXECUTOR PAID LEGAL FEES.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

ETHEL ROGERS

For Revision or Refund of Personal
Income Taxes under Article 16 of
the Tax Law for the year 1960

CASE LAW CITED

REMARKS

DETERMINATION

Ethel Rogers, the taxpayer, has filed an application for revision or refund of personal income taxes under Article 16 for the year 1960. A formal hearing was held, and the taxpayer appeared through her representative, A. Jesse Goldstein, CPA.

Findings of Fact:

(1) The taxpayer, Ethel Rogers, and her husband, Herbert Rogers, deceased, filed a joint Federal return for the year 1960, and elected to file separate New York State income returns on combined New York State form IT-208.

Included in their Federal itemized deductions was the amount of \$6750.00 representing legal and accounting fees which had been deducted on their combined New York State return by the taxpayer, Ethel Rogers.

(2) By assessment no. AB-031925 dated November 20, 1962, the Income Tax Bureau of the Department of Taxation and Finance recomputed the personal income taxes of the taxpayer for the year 1960 after disallowing the said deduction of legal and accounting fees. The amount of additional personal income tax found due was \$604.19.

(3) The taxpayer's husband, Herbert Rogers, now deceased, was the surviving executor of the Estate of Mark H. Rogers, who died in the year 1930. The estate had become insolvent as a result of the distribution of its assets to the legatees. Subsequently, the United States Government sued Herbert Rogers as surviving executor for the unpaid interest on its determination of Federal estate taxes. The deduction of \$6750 represented the legal and accounting fees paid by Herbert Rogers in defending this law suit. Ultimately, a settlement was made.

(4) The taxpayer, Ethel Rogers, contends that the professional fees were incurred for the protection of the interests of Herbert Rogers and therefore a proper deduction.

(5) The taxpayer has failed to prove that the payment in the amount of \$6750 was ordinary and necessary to either the production or collection of income or to the management, conservation or maintenance of property held for the production of income in the trade or business of the taxpayer.

The professional expenses in issue were incurred by the late Herbert Rogers in his capacity as executor of the Estate of Mark Rogers, arising out of the conduct of the affairs of the Estate. The legal and accounting fees are therefore, the expenses of the Estate, and not deductible by the taxpayer.

(6) The taxpayer further contends that if the notice of additional assessment is sustained, then the amount of \$594.05 listed on Form IT-208 as an overpayment by Herbert Rogers should be applied as a credit against the additional assessment.

(7) On Form IT-208 for the year 1960, however, the taxpayer and her husband requested at item 19 to have the overpayment in question credited toward the estimated tax for 1961.

Determination:

(A) The deduction of \$6750 for legal and accounting fees was not a validly deductible expense by Ethel Rogers or her deceased spouse Herbert Rogers.

(B) The deduction of \$6750 was properly disallowed by the Income Tax Bureau of the Department of Taxation and Finance.

(C) The Notice of Additional Assessment for the year 1960, numbered AB-031925 was correctly issued, and the amount of tax stated therein is due and owing, together with lawful interest charges.

(D) The amount shown on Form IT-208 (1960) as an overpayment by Herbert Rogers (deceased) is not available as a credit against the assessment in issue for the year 1960.

(E) The taxpayer's application for revision or refund under Article 16 of the Tax Law for the year 1960 is denied.

DATED: November 19, 1969

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Mauley
COMMISSIONER

Milton Krenner
COMMISSIONER

STATE OF NEW YORK
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