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Personal Income
16 374

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

Robert E. and Julia E. Curran

For Revision or Refund of Personal Income Tax under Article 16 of the Tax Law for the Years 1957 and 1959

DETERMINATION

The taxpayer, having filed an application pursuant to Tax Law Section 374 for revision or refund of personal income tax, imposed under Article 16 of the Tax Law for the years 1957 and 1959 and as assessed under a notice dated December 26, 1967 and such application having been denied, and a hearing having been demanded and duly held and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole question in this case is the validity of an assessment when such assessment is based upon a change in taxable income by the Federal Commissioner of Internal Revenue. The taxpayer waives any hearing as to the merits of the assessment.

2. On May 12, 1967, the Department received a letter from the taxpayer listing changes in Federal taxable income as found by the Federal authorities. The validity of such changes were disputed. The taxpayer, however, has refused to give any explanation of these changes, or of his disagreement with them, by the filing of New York Income Tax form IT-115, or otherwise, as required by Regulation 20 NYCRR 270.21(b).

3. A notice of additional assessment for the years 1957 and 1959 in the amounts of $673.39 and $1404.47 exclusive of penalty and interest was issued against the taxpayer on December 26, 1967. A 5% statutory charge and interest at 12% per annum were added thereto.

4. Applications for revision for the December 26, 1967 assessments were received on May 8, 1969 wherein it was stated that the Federal changes underlying the assessment resulted from a settlement with the Federal authorities in which the taxpayer made no concession of liability. Such applications were denied on July 18, 1969 and demands for a hearing were filed on July 29, 1969.

5. The Federal Revenue Agents report submitted by the Department indicated; for 1957, a tax due which had already been paid plus a 50% fraud penalty under I.R.C. Sec. 6653(b); and for 1959 a tax due which had been paid in part plus a 50% fraud penalty. It reported "The principal causes of changes were the increases of income by omitted fees and by unexplained sources of deposits, etc. and the imposition of the fraud penalty".

5a For 1957 the report recommended an increase in Federal taxable income from $31,668.74 to $42,135.45 for an increase of $10,466.71. Gross fees were increased by $80,891.76; less payments against gross fees not reported on the return, of $69,945.00 for a net of $11,946.76; net long term capital gain on shares of stock by $2,711.95 (before the 50% exclusion); dividend income, $227.61; State income taxes were decreased by $86.37; other expenses taxes and contributions were allowed in the amount of $3,150.00 not taken on the return.

5b For 1958 certain adjustments were made but none involving capital gains. Changes in ordinary income are immaterial because of the forgiveness of New York normal tax in that year.

5c For 1959 taxable income was increased in the amount of $16,579.18 from $31,651.36 reported on the return to $42,230.54. This was done as follows: Gross fees were increased by $18,863.49 less payments against gross fees of $1,296.35 for a net increase of $17,567.14; the sum of $5,055.09 was added to income since it could not be traced to a known source and it represented deposits with the following: Underwriters Trust Co., Franklin National Bank, F.I. duPont & Co., Newburg & Co., Chemical Corn Exchange Bank and J. Gerald Cregan; other increases in income $200.74; other decreases in taxable income $6,263.84.

6. The New York assessment is based upon the corrected Federal taxable income as shown on the Federal Revenue agents report with adjustments being made for differences in the New York and Federal tax base and further with the sum of $2,711.95 for 1957 being separately taxed as capital gain at 1 1/2% for a capital gain tax of $35.64.

7. The taxpayer knew that the New York assessment was based on Federal findings and knew the amounts of taxable income found by the Federal authorities. Furthermore, the taxpayer by reason of his contest with the Federal authorities, if not otherwise, knew the basis of the Federal findings. The taxpayer had sufficient knowledge to contest the State assessment on the merits.

8. The taxpayer alleges that in February 1967 the controversey with the Federal authorities was settled for a sum substantially less than that shown on the revenue agents report. No evidence of this, however, has been produced.

9. The taxpayer willfully, and without justification failed to comply with the provisions of Regulation 20 NYCRR 279.21(a) requiring the submission of an explanation of Federal changes.

Based in the foregoing findings and all the evidence in the case the State Tax Commission hereby,

DETERMINES:

A. Tax Law Section 373(4) explicitly permits and requires the Commission to issue an assessment on the basis of only a notice of Federal changes and without need of securing other information to justify the assessment.

B. The assessment in issue was not made to extend the period of assessment against the taxpayer or for any other ulterior motive.

C. A tax assessment can be based on information received from any source and it need not disclose on its face the basis of its computations. Furthermore, where an assessment is based on Federal changes and the taxpayer wilfully refuses to disclose the explanation of changes made by Federal authorities the Department is under no duty to explain the State assessment based on these changes.

D. The assessment is presumptively correct; the taxpayer normally has the burden of going forward with the evidence to show that it is incorrect; while the burden of going forward can shift to the Department in certain instances; such burden cannot shift when the taxpayer has not even appeared to deny under oath the validity of the assessment and to be cross-examined on such denial.

E. Applications for rulings on the burden of going forward with evidence cannot be made before a hearing on the merits starts.

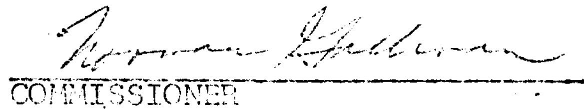
F. An assessment based on a notice of Federal changes and a Federal revenue agents report is valid and any subsequent compromise of the Federal assessment is of no binding effect on the State and does not vitiate the New York assessment.

G. The assessment does not include taxes or other charges which could not have been lawfully demanded.

H. The demand for hearing is dismissed and the assessment is affirmed in the amounts shown in paragraph three (3) together with such additional charges, if any, as may be lawfully due under Sections 376 and 377 of the Tax Law.

DATED: Albany, New York
March 9, 1970

STATE TAX COMMISSION



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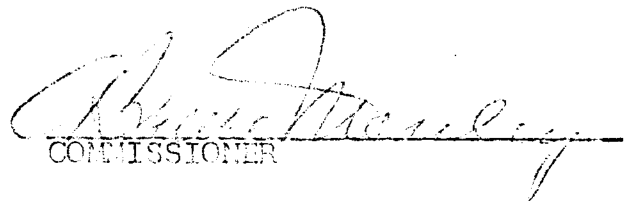

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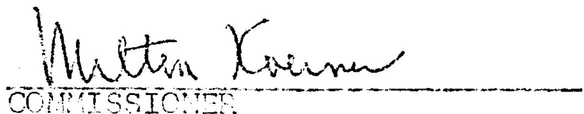

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