

Department of the Treasury 9

Internal Revenue Service
Washington, DC 20224

Date: 28 NOV 1973

In reply refer to:
T:I:I:1:1

Mr. Aleks Kurgvel
3602 16th Street, N. W.
Washington, D. C. 20010

Dear Mr. Kurgvel:

This is in reply to your letter, with enclosures, in which you request a ruling concerning the deductibility, for Federal income tax purposes, of certain taxes, interest, and legal expenses.

You state that you have been living and working in Washington, D. C., since your arrival in the United States in 1953, and you have paid District of Columbia personal income taxes on a regular basis. However, your wife and one of your sons live in New York, and you have a house a portion of which is rented located in New York. For some time you have traveled back and forth between Washington, D. C., and New York to see your family and care for your house.

In 1965 you were deemed to be a resident of New York state, and New York requested that you pay personal income taxes for the years 1962, 1963, 1964, and 1965. Even though you contested this finding, you were required to pay the taxes for the years involved. The sum which you paid, \$1,443.46, consisted of \$753.58 of assessed taxes and \$389.88 of interest. You made the payment on July 3, 1973. You would like to know whether you may claim a deduction for the taxes and interest you have paid to the state of New York and for the legal expenses you incurred in contesting the payment of the taxes. After ruling on these issues, we will also comment on the Federal income tax treatment of the tax refund that you contemplate receiving from the District of Columbia.

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CENTRAL INTELLIGENCE AGENCY
SOURCE METHOD EXEMPTION 3020
NAZI WAR CRIMES DISCLOSURE ACT
DATE 2006

Mr. Aleks Kurgvel

Section 164(a) of the Internal Revenue Code of 1954 specifically enumerates five classes of taxes that are deductible for Federal income tax purposes. These five classes are: (1) State and local, and foreign, real property taxes; (2) State and local personal property taxes; (3) State and local, and foreign, income, war profits, and excess profits taxes; (4) State and local general sales taxes; and (5) State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels. Accordingly, since the taxes you paid to New York were state income taxes, we conclude that you may claim a deduction therefor.

Section 163 of the Code provides that there shall be allowed as a deduction all interest paid on indebtedness. Revenue Ruling 66-311, 1966-2 C. B. 49 holds that interest paid for failure to pay taxes when due is deductible. Accordingly, we conclude that you may claim a deduction for the interest you paid to the state of New York in connection with the payment of state income taxes.

Section 212(3) of the Code provides that in the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in connection with the determination, collection, or refund of any tax. Accordingly, we conclude that you may claim a deduction for the legal expenses you incurred in contesting the tax New York state tax imposed on you.

With respect to the tax refund that you contemplate receiving from the District of Columbia, it should be noted that the return or recovery of property that was once the subject of an income tax deduction must be treated as income in the year of its recovery, and taxed at the prevailing rate of that year. The only limitation upon this principle is the so-called "tax-benefit rule." This rule permits exclusion of the recovered item from income so long as its initial use as a deduction did not provide a tax saving. But where full tax use of a deduction was made and a tax saving thereby obtained, then the extent of saving is considered immaterial. The recovery is viewed as income to the full extent of the deduction previously allowed.

Mr. Aleks Kurgvel

If you itemize your deductions, it is important that a copy of this ruling letter be attached to your tax return for the taxable year 1973. Accordingly, a copy is enclosed for that purpose.

The foregoing conclusions pertain only to deductions that may be claimed for Federal income tax purposes. We express no opinion with respect to your state income tax liability.

Sincerely yours,

Lester W. Utter

Chief, Individual Income Tax Branch