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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations A-Z**Kane, Walter T. &  
Florence*

TO: Commissioners Murphy, Palestin & Macduff

FROM: Vincent P. Molineaux

SUBJECT: Walter T. Kane and Florence Kane  
Application for revision or refund

A hearing on the above matter was held before me as hearing officer at 80 Centre Street, New York, N. Y. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The applicant is a salesman for a manufacturer's representative in the sale of heating and air conditioning equipment. The company office is in New York City and the petitioner, as a field man, spent about one day a week in the office. In addition, he had also set up an office in his home in Westchester. His territory, which he shared with others on an undivided basis, included all of New York City and Long Island, northern New Jersey and the counties in southeastern New York State. He claimed that his office in his home in north Tarrytown made it much better to service the trade. However, most of his business was developed through personal contact at the clients' businesses, or by telephone. He had no staff in his home. The phone was not listed in his firm name and the company gave him no allowance for such office.

The home office appears to be a convenience for the petitioner but not a necessary business expense, and I recommend that the determination of the State Tax Commission denying the application be in the form submitted herewith.

/s/

V. P. MOLINEAUX

Senior Attorney

VPM:rlp  
Enc.

December 7, 1965 (Jan. 19, 1966)

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
WALTER T. KANE & FLORENCE KANE  
FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 18 OF THE  
TAX LAW FOR THE YEAR 1959  
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Walter T. Kane and Florence Kane, the applicants herein, having filed an application for revision or refund of personal income taxes assessed under Article 18 of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N. Y. before Vincent P. Molineaux, Hearing Officer, at which hearing the petitioner, Walter T. Kane, appeared personally, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a resident return of income for the year 1959 and paid the tax shown to be due thereon; that the taxpayer itemized his personal deductions listing real estate taxes on his home and interest on mortgage indebtedness on his home; that in addition thereto, the taxpayer deducted from the income reported by him as expenses for an alleged office in his home, one-sixth of the real estate taxes already deducted in full as personal expense, and one-sixth of the monthly mortgage payments which include interest expense already deducted in full, and capitalization on the home; that the taxpayer further deducted one-sixth of the fuel, water, maintenance and depreciation on his home.

(2) The taxpayer also deducted the amount of \$75 paid to his wife as secretarial services and further deducted the telephone expense of \$75.20 and entertainment in the home in the amount of \$85.

(3) That an assessment (B-822473) for the year 1959 was issued November 18, 1960 in the amount of \$43.72 disallowing all of the above deductions; that thereafter a portion of the assessment was cancelled to the extent of \$6.73 to give allowance for the telephone and entertainment expense.

(4) That the applicant Walter T. Kane had two employers in 1959 for six months each, both of whom are manufacturers' representatives in the sale of heating and air conditioning equipment. The offices of both companies are in New York, and petitioner had the use of these office facilities; that the territory of the petitioner as a representative and sales engineer, which he shared on an undivided basis with three other representatives, included New York and surrounding counties both within and without the State of New York; that the taxpayer states that his activities were primarily in counties close to his home in Westchester.

(5) That petitioner has actually set up in his home an office with a desk, typewriter, telephone, two bookshelves of reference material, and file cabinets; that no clerical or other help is employed there and all formal quotations are sent out from New York; that the telephone is not listed under the firm name, and correspondence is addressed to the New York office; that the taxpayer alleged that he used his home for work for the purpose of availing himself of evenings to analyze and prepare estimates from data which he brought back to his home, and that he would occasionally have a business conference in the home.

(6) That there was no requirement pursuant to any contract of the employer or any other direction of the employer or as a

necessary condition of employment that the taxpayer worked at home; that the use of the petitioner's home was merely for the convenience of the petitioner and any deductions taken therefor were not ordinary or necessary business expenses.

(7) That the taxpayer has further failed to substantiate the payment of \$75 to his wife for secretarial assistance as ordinary or necessary.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the deductions claimed for business use of petitioner's home and payment to the taxpayer's wife were properly disallowed.

(B) That assessment (B-822675) for the year 1959 as partially cancelled is correct and legally due and owing together with lawful interest thereon, and that accordingly the application for revision or refund filed in respect to said assessment is hereby denied.

DATED: Albany, New York this 28th day of January , 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner