

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations
A-Z
Weinstock, Allyn J. & Estelle

TO: Commissioners Murphy and Macduff

FROM: Francis V. Dow, Hearing Officer

SUBJECT: Allyn J. & Estelle Weinstock, application for revision or refund of an assessment of personal income taxes under Article 16 of the Tax Law for the year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on October 4, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

A letter assessment was issued July 24, 1961 notifying the taxpayer of additional tax due covering deductions for travel expenses, etc. of \$13,980 and automobile expenses of \$1,413.75 which were disallowed as unsubstantiated. It appears that although the procedure of issuing a letter assessment was not the usual practice of the Department, this was a valid assessment occasionally in use by the Department. (See memorandum of Mr. Bodian dated September 12, 1966.) The taxpayer does not contest any irregularity of the assessment.

The taxpayer received payment from his employer, Mr. Lowenstein & Sons, Inc., for some of the expenses which he incurred as a sales executive in the textile business. The payments which the taxpayer's employer made were irregular. The taxpayer was not required to account as to how these monies were expended. The taxpayer contends that a substantial part of the deductions claimed by him represented "extra compensation" for those with whom he did business. The taxpayer's employer did not reimburse him for any of these payments. The taxpayer was unable to submit any proof or evidence whatsoever of his expenses including the deductions disallowed. He claimed that his records were lost.

Furthermore, the question of whether or not the extra compensation paid by the taxpayer was a "kick back" in violation of section 439 of the Penal Law is not being determined herein. The testimony of the taxpayer was so vague with regard to such payments that it is sufficient for the purposes of the determination that the taxpayer has failed to show that the alleged expenses were ordinary or necessary in the production of his income.

In view of the fact that the taxpayer has failed to substantiate any of the itemized deductions claimed by him for the year in issue, I am of the opinion that the assessment should be sustained.

For the reasons stated above, I recommend that the determination of the State Tax Commission in this matter be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

November 25, 1966

FVD:cp
Enc.

/s/

M. Schapiro

Approved

/s/

S. Heckelman

Approved

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ALLYN J. & ESTELLE WEINSTOCK

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEAR 1959

The taxpayers herein having duly filed an application for revision or refund of personal income taxes imposed under Article 16 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 at 80 Centre Street, New York, New York before Francis V. Dow, Hearing Officer, at which hearing the taxpayer appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a resident New York State income tax return for the year 1959; that during that year the taxpayer, Allyn J. Weinstock, was employed as a sales representative in the textile industry; that the taxpayer deducted from his earnings travel and other sales expenses of \$13,960 and automobile expenses of \$1,413.75.

(2) That an assessment (File No. 3153005) was issued on July 24, 1961 notifying the taxpayer that deductions for travel expenses and automobile expenses were disallowed as unsubstantiated and that additional tax in the sum of \$1,541.16 was due covering the disallowed deductions.

(3) That the taxpayer admits that he received reimbursement from his employer for some of his selling expenses, which expenses he was not required to report to his employer; that the taxpayer failed to submit and is unable to submit any proof or evidence to substantiate any of his travel expenses, sales expenses and automobile expenses claimed as deductions by him for the year 1959; that the taxpayer failed to show that the alleged expenses were ordinary and necessary in the production of income.

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

DETERMINES:

(A) That the deductions claimed by the taxpayer for travel expenses in the sum of \$13,980 and automobile expenses in the sum of \$1,413.75 were properly disallowed by the State Tax Commission since they were unsubstantiated and further, they were not shown to be ordinary and necessary expenses incurred or paid for the production of gross income.

(B) That due to an error in mathematical computation the assessment for additional taxes (File No. 5153005) for the year 1959 is modified to the extent of \$1.80; that said assessment for the year 1959 is affirmed in the corrected amount of \$1,539.38 and not in the amount of \$1,541.18 as set forth in the assessment; that said assessment as corrected does not include any other taxes or charges which are not lawfully due and owing.

DATED: Albany, New York this 6th day of December , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER