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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*A-Z*  
*Largelere, William*

TO: State Tax Commission

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: WILLIAM LARGELERE

Application for Revision or Refund  
of Personal Income Taxes Under  
Article 16 of the Tax Law for the  
Year 1959

A hearing with reference to the above-entitled matter was scheduled before me on November 13, 1967 at 80 Centre Street, New York, New York. The taxpayer defaulted in appearance.

The issue involved disallowance of deductions for claimed medical and travel expenses for lack of substantiation. Although a question was raised as to the dependency exemption claimed for the taxpayer's mother (see transmittal memorandum dated November 1, 1963 and conference memorandum dated July 9, 1963) the question need not be resolved as neither the Federal changes nor the assessment disallowed the exemption.

Taxpayer filed a personal income tax return for 1959 reporting New York taxable income of \$2,627. By Federal audit changes deductions of \$1,203 for claimed medical expenses and \$1,154 for claimed travel expenses were disallowed for lack of substantiation. Assessment No. ABIF 343227 was issued on October 30, 1963, based on the Federal changes, increasing taxpayer's income for 1959 by \$2,347, the total of the disallowed deductions, and additional normal tax of \$90.15 assessed.

Taxpayer contends that he did not consent to the Federal changes and that the deductions were allowable. (Report of conference dated July 9, 1963.) The claimed travel expenses involved two regular trips every week to the taxpayer's employer's Manhattan office and meals and entertainment in connection therewith. The claimed medical expenses involved money allegedly given in 1957 to his mother, who he claimed as a dependent, for her use in paying her medical bills. No bills or other evidence were submitted to substantiate that any of these expenses were incurred.

Deductions claimed for ordinary and necessary business expenses under section 160(1) of the Tax Law are allowable subject to the provisions of Regulations 20 NYCRR 253.2(f) which does not allow deduction for commutation expenses, 20 NYCRR 253.9(b) which requires such deductions to be substantiated by records in detail, and 20 NYCRR 253.17 which does not allow deductions for personal expenses.

Deductions for medical expenses under section 360(19) of the Tax Law are required to be substantiated pursuant to Regulations 20 NYCRR 253.48(g) which requires submission of the names and addresses of the persons to whom such payments have been made, and 20 NYCRR 253.48(h) which requires submission of statements by the recipients of such payments showing the nature of the medical services rendered and the cost thereof.

Accordingly, I am of the opinion that the taxpayer has failed to sustain the burden of proof to show that the claimed business expenses were ordinary and necessary in the production of income within the meaning of the Tax Law, or to substantiate any of the deductions disallowed, and that the assessment should be sustained.

The determination of the Tax Commission should be substantially in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

Hearing Officer

AR:ac  
Enc.

January 31, 1968

2-5-68

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION** :  
**OF** :  
**WILLIAM W. LARSELERE** :  
**FOR REVISION OR REFUND OF PERSONAL** :  
**INCOME TAXES UNDER ARTICLE 16 OF** :  
**THE TAX LAW FOR THE YEAR 1959** :  
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William W. Larselere, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959 (Assessment No. ANTF 343227) and a notice of hearing having been duly served by mail on the taxpayer on September 28, 1967 setting down a hearing for November 13, 1967 at 1:00 P.M. at 80 Centre Street, New York, New York, before Alfred Rubinstein, Hearing Officer of the State Tax Commission, and the taxpayer having defaulted in appearing, and a notice thereafter having been served on the taxpayer by certified mail, according him further opportunity to appear and be heard, and an official receipt of the United States Post Office having been received as proof of delivery of said notice, and the taxpayer not having responded thereto, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, William W. Larselere, filed a personal income tax resident return for 1959 on which he reported New York taxable income of \$2,627.00; that in computing his taxable income taxpayer deducted claimed business travel expense of \$1,144.00 and claimed medical expense of \$1,203.00; that by Assessment No. ANTF 343227 the Income Tax Bureau disallowed the deductions for claimed travel expense and medical expense, increased taxpayer's

income by \$2,347.00, the total amount of the claimed deductions disallowed, and assessed additional normal tax of \$90.15, based on Federal audit changes which disallowed these deductions for lack of substantiation.

(2) That the taxpayer filed a timely application for revision; that taxpayer's application for revision was denied for failure to submit any evidence in substantiation of the claimed deductions; that the taxpayer filed a timely demand for hearing.

(3) That in 1959 the taxpayer was employed as Vice President in charge of administration by Fact Finders Association, Inc., a corporation engaged in public opinion polling for marketers of commercial products; that taxpayer's employer maintained offices in Babylon, New York and New York City; that taxpayer resided in West Islip, New York and regularly commuted to his office in New York City two days of every week; that taxpayer regularly commuted to his office in Babylon the balance of the time; that the deduction for business travel expense claimed by the taxpayer on his income tax return for 1959 was for expense of commutation to his New York City office.

(4) That the medical expense deduction taken by the taxpayer on his income tax return for 1959 was claimed to have been incurred on behalf of his mother for whom he claimed a dependency exemption; that the taxpayer contended that such medical expense was paid by his mother out of moneys given to her by the taxpayer in 1957.

(5) That the taxpayer has not submitted any evidence or proof as to the nature of any of the items of travel expense or medical expense claimed by him as deductions; that the taxpayer has not submitted any evidence or proof to substantiate amounts for claimed travel expense and medical expense if, in fact, they

were incurred by him.

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

**DETERMINES:**

(A) That the deduction for claimed business travel expense taken by the taxpayer on his income tax return for 1959 was commutation expense; that such expense was not ordinary and necessary business expense within the meaning of section 360(1) of the Tax Law; that such deduction for claimed business travel expense was personal expense and properly disallowed.

(B) That the deduction for claimed medical expense taken by the taxpayer on his income tax return for 1959 was not allowable as expense for medical care incurred by the taxpayer within the meaning of section 360(15) of the Tax Law; that such deduction for claimed medical expense was properly disallowed.

(C) That accordingly, the assessment imposing additional normal tax of \$90.15 upon the taxpayer for the year 1959 is correct; that the amount set forth therein is due and owing together with interest and other statutory charges; that said assessment does not include any tax or other charges which could not have been lawfully demanded and that taxpayer's application for revision or refund with respect thereto be and the same hereby is denied.

**DATED:** Albany, New York this 13th day of February , 1968.

**STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**PRESIDENT**

/s/ A. BRUCE MANLEY  
**COMMISSIONER**

COMMISSIONER