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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN F. & MARIE J. MALLON

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1962 and 1963;

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon John F. &
Marie J. Mallon (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John F. & Marie J. Mallon
Tonetta Lake Park
Brewster, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

10th day of May, 1972.

Donald H. Furrow

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN F. & MARIE J. MALLON

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AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1962 & 1963 :

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May, 1972, she served the within

Notice of Decision (or Determination) by (certified) mail upon

Robert E. Landry, C.P.A.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Robert E. Landry, C.P.A.

175 Main Street

White Plains, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

10th day of May, 1972

Maitha M. M. M.

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York
May 10, 1972

John F. & Marie J. Mallon
Tonetta Lake Park
Brewster, New York

Dear Sir and Madam:

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 and 722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JOHN F. & MARIE J. MALLON :

DECISION

for a Redetermination of Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1962 and 1963. :

Petitioners, John F. Mallon and Marie J. Mallon, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1962 and 1963. (File No. 3-8114320). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 16, 1972, at 1:15 P.M. Petitioners appeared by Robert E. Landry, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were adjustments, as a result of a field examination, of petitioners, John F. Mallon and Marie J. Mallon's 1962 and 1963 personal income tax and unincorporated business tax liabilities properly made?

FINDINGS OF FACT

1. Petitioner, John F. Mallon and Marie J. Mallon, filed New York State income tax resident returns for the years 1962 and 1963. Petitioner, Marie J. Mallon, filed New York State unincorporated business tax returns for said years.

2. On April 10, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, John F. Mallon and Marie J. Mallon, imposing additional personal income tax due for the year 1962 in the sum of \$1,473.92, and for the year 1963 in the sum of

\$25.39, as a result of a field examination which made the following adjustments:

<u>1962</u>	
Deposits (source not explained)	
considered additional sales	\$14,086.75
Cash expenses unsubstantiated	600.00
Medical expense adjustment	587.47
	<hr/>
TOTAL	\$15,274.22

<u>1963</u>	
Cash expenses unsubstantiated	\$ 250.00
Medical expense adjustment	10.00
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TOTAL	\$ 260.00

In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$1,856.52.

3. On April 10, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Marie J. Mallon, imposing additional unincorporated business tax in the sum of \$513.42 for the year 1962 and \$8.00 for the year 1963, as a result of a field examination which made the following adjustments:

<u>1962</u>	
Deposits (source not explained)	
considered additional sales	\$14,086.75
Cash expenses unsubstantiated	600.00
Additional salary credit	(1,851.21)
	<hr/>
TOTAL	\$12,835.54

<u>1963</u>	
Cash expenses unsubstantiated	\$ 250.00
Additional salary credit	(50.00)
	<hr/>
TOTAL	\$ 200.00

In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$645.70.

4. Petitioners, John F. Mallon and Marie J. Mallon, did not claim a medical and dental expense deduction on their 1962 Federal or New York State personal income tax returns. They claimed a medical and dental expense deduction on their 1963 Federal and New York State personal income tax returns.

5. Petitioners, John F. Mallon and Marie J. Mallon, conceded that \$250.00 in cash expenses for the year 1963 were unsubstantiated. They contend, however, that the medical expense adjustment should be \$7.50 instead of \$10.00.

6. Petitioners, John F. Mallon and Marie J. Mallon, sold their home on June 15, 1962. The total cash received by them in the transaction was \$1,600.00 on the signing of the contract and \$4,590.46 on the closing of title or a total cash consideration of \$6,190.46. The transaction was not taxable since they had purchased another home within one year of the date of the sale. The Income Tax Bureau, in computing deposits from unexplained sources for the year 1962, did not give them credit for the deposit of said \$6,190.46.

7. Petitioners, John F. Mallon and Marie J. Mallon, have failed to submit any documentary or other sufficient evidence to explain the source in the year 1962 of deposits totaling \$7,896.29.

8. Petitioners, John F. Mallon and Marie J. Mallon, failed to submit documentary or other sufficient evidence to indicate that they incurred cash business expenses in the sum of \$600.00 during the year 1962.

CONCLUSIONS OF LAW

A. That petitioners, John F. Mallon and Marie J. Mallon, did not claim a medical expense deduction pursuant to Internal Revenue Code, Section 213 on their 1962 Federal and New York State personal income tax returns, and therefore the Income Tax Bureau incorrectly made a medical expense adjustment in the sum of \$587.47.

B. That the Income Tax Bureau properly increased petitioners, John F. Mallon and Marie J. Mallon's 1963 income by the amount of \$250.00 in unsubstantiated cash expenses, but incorrectly computed the medical expense adjustment as \$10.00. The correct medical expense adjustment was 3% of \$250.00 or the sum of \$7.50. Internal Revenue Code, Section 213.

C. That petitioners, John F. Mallon and Marie J. Mallon, failed to substantiate that they incurred cash business expenses in the sum of \$600.00 during the year 1962, and therefore the Income Tax Bureau properly increased their income for said year by said sum.

D. That petitioners, John F. Mallon and Marie J. Mallon, failed to substantiate the source of deposits in excess of reported sales and loans totaling \$7,896.29 for the year 1962, and therefore said sum is considered to be additional income for said year.

E. That the petition of John F. Mallon and Marie J. Mallon is granted to the extent for the year 1962 of reducing deposits (source not explained) considered additional sales from \$14,086.75 to \$7,896.29 and of reducing the medical expense adjustment from \$587.47 to \$0.00, and for the year 1963 of reducing the medical expense adjustment from \$10.00 to \$7.50; that the additional personal income tax due for the year 1962 is reduced from \$1,473.92 to \$796.13 and for the year 1963 is reduced from \$25.39 to \$25.12, together with such interest as may be lawfully due; that the additional unincorporated business tax due for the year 1962 is reduced from \$513.00 to \$271.88, together with such interest as may be lawfully due; that the Income Tax Bureau is hereby directed to modify the notices of deficiency issued April 10, 1967, accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

May 10, 1972

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koehn

COMMISSIONER