

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EUGENE P. CANINI

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

For a Redetermination of a Deficiency or
a Refund of Personal Income Tax
Taxes under Article(s) 22 of the
Tax Law for the Year(s)

State of New York
County of Albany

MARYLOU SAMUELS

, 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 18th day of May, 1976, she served the within

Notice of Decision (~~of Determination~~) by (certified) mail upon Eugene P. Canini

(~~representative of~~) the petitioner in the within

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

wrapper addressed as follows: Mr. Eugene P. Canini
PO Box 152
Anderson, South Carolina 29621

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

18th day of May, 1976.

Janet Mack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

May 18, 1976

TELEPHONE: (516) 457-3850

Mr. Eugene P. Canini
PO Box 152
Anderson, South Carolina 29621

Dear Mr. Canini:

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

Please take further notice that pursuant to
Section ~~690~~ 690 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within
from the date of this notice.

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

Very truly yours,

PAUL B. COBURN
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

~~Petitioner's Representative:~~

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EUGENE P. CANINI : DECISION
for a Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for the :
Year 1971. :

Petitioner, Eugene Canini, PO Box 152, Anderson, South
Carolina 29621, has filed a petition for redetermination of deficiency
or for refund of personal income tax under Article 22 of the Tax Law for
the year 1971. (File No. 1-76240350).

The petitioner, in writing, waived a formal hearing and submitted
the case to the State Tax Commission on the entire record contained in the
file. The State Tax Commission renders the following decision after due
consideration of the said record.

ISSUE

Did the petitioner, Eugene Canini, properly deduct amounts
characterized as charitable contributions and miscellaneous deductions
on his New York State income tax return for the year 1971.

FINDINGS OF FACT

1. Petitioner, Eugene Canini, timely filed Federal and New York State income tax returns for the year 1971. On said returns, the petitioner claimed charitable contribution deductions totalling \$816.00 and miscellaneous deductions totalling \$758.00. The petitioner resided at 30 Lake Street, White Plains, New York and was employed as a sales manager by Baxter, Kelly and Faust, Inc., during the year in question.

2. On June 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner asserting that additional tax was due for the year 1971. The grounds for the assessment were that the petitioner had failed to substantiate \$738.00 in charitable contributions and \$758.00 in miscellaneous deductions. A Notice of Deficiency was issued asserting \$209.44 in additional tax due plus \$27.54 in accrued interest for a total amount of \$236.98.

3. The petitioner, Eugene Canini, offered a check made out to the Archdiocese of New York in the amount of \$45.00 to substantiate part of his charitable contribution deductions. The petitioner claimed that the remainder of these charitable contributions were cash contributions and donations of personal property to various churches and charitable organizations for which no receipts were given. The petitioner stated that his miscellaneous business related deductions consisted of the following: Christmas cards and stamps, \$15.00; magazines and periodicals, \$55.00; gifts and entertainment (purchased at less than \$25.00 per item), \$160.00;

and home office expenses, \$447.00. The petitioner offered a letter dated November 10, 1972, from Baxter, Kelly & Faust stating that Mr. Canini travelled extensively in his work and that it was necessary for him to maintain an office in his home. The petitioner computed his home office expense in the following manner. The petitioner determined that one-half of one room of his four-room apartment (1/8 of his home) was devoted to business use. The petitioner multiplied his total monthly rent and electricity expense by twelve to determine a full year's expenses and divided that figure by eight to achieve his annual home office expenses. A check dated December 1, 1971, in the amount of \$342.00 made out to Biltmore Towers was offered to substantiate the monthly rental cost of the petitioner's apartment.

4. The petitioner, Eugene Canini, adequately substantiated deductions for Christmas card expenses and for magazine cost while showing those items to be related to petitioner's business. The petitioner failed to present any evidence, either documentary or any other sort to prove that charitable cash contributions or donations of personal property were actually received by charitable organizations.

CONCLUSIONS OF LAW

A. That, the petitioner, Eugene Canini, properly deducted amounts representing Christmas card expenses, magazine expenses, and gift and entertainment expenses incurred in purchases of less than \$25.00 per item. The petitioner's deduction of charitable contributions was proper in the amount of \$45.00 as substantiated by his check to the Archdiocese of New York.

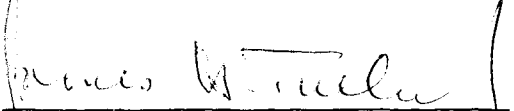
B. That, the petitioner, Eugene Canini, properly deducted expenses for maintenance of an office in his home since he proved this expenditure to be ordinary and necessary to his business.

C. That, the remainder of the petitioner's purported charitable deduction was properly disallowed since the actual receipt of the purported contributions was not substantiated.

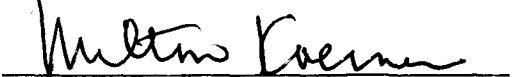
D. That, the petition is granted to the extent of reducing contributions and miscellaneous deductions disallowed from \$1,496.00 to \$641.00, and of reducing additional personal income tax due from \$209.44 to \$90.74, together with such interest as may be lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 24, 1974, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 18, 1976

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER