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MEMORANDUM

Income Tax Determinations
Parker, Fan *A-2*

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Fan Parker, application for revision or refund of an assessment of personal income taxes for the year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on October 7, 1963. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not the expenses of a trip to Russia undertaken by a college professor who teaches Russian and conducts courses in Russian culture should be allowed as deductions as and for education expenses.

The facts herein disclose that the taxpayer, an assistant professor at Brooklyn College, conducted courses in Russian culture and taught the Russian language. In 1959 the taxpayer took a trip to Russia during her summer vacation with the approval of the college, during which trip the taxpayer visited numerous educational and cultural institutions. The entire expense of the trip was deducted by the taxpayer as and for educational expenses. Although these expenses were allowed by the Federal Government, they were disallowed by the Income Tax Bureau and a refund of \$94.96 was disallowed. The record is clear that such trip was not necessary for the maintenance of the teacher in her present position. Although the taxpayer was promoted to the rank of associate professor after her return from Russia, it does not appear that the trip was undertaken either as a condition to the taxpayer's promotion or with an immediate view to enhancing her opportunities of promotion.

The Federal Courts have permitted deductions for education in the form of courses studied for the maintenance or the improvement of skills and such position has been adopted by the Federal Internal Revenue Service under their regulations. However, the cost of trips undertaken by teachers on summer vacations alleged to be for the maintenance or improvement of skills have been initially disallowed. In the case of Cardozo vs. Commissioner of Internal Revenue, 17 T.C. 3, an assistant professor of history and romance languages undertook a summer trip to Europe alleging that this equipped him to better perform the duties for which he was employed. The taxpayer was also promoted to associate professor after his return from abroad. The Court disallowed such expenses holding that such expenses were primarily personal in nature. In the case

of Addelson et. al. v. U.S., 63-2 USTC, paragraph 9631, a district court held that an English language, Literature and Journalism teacher was not entitled to a deduction of expenses of a trip abroad while on his summer vacation. The Court, while not disagreeing with the earlier Cardozo case (a tax court case), stated that the facts are distinguishable, since in the Cardozo case, the purpose of the trip was to obtain a promotion. (A plain reading of that case does not reveal such purpose, however). In the even more recent case of Cross vs. U.S., 63-2 USTC, paragraph 9762, the Court held that an assistant professor who later became a full professor and who taught romance languages was entitled to deduct the expenses of a trip to Europe into countries where such languages were spoken since the expenses were reasonable and necessary for the maintenance and improvement of his skills as a teacher. Although the Cardozo case, supra, was not discussed, the Court distinguished the Addelson case, supra, in that a trip by a teacher of English to foreign countries speaking foreign languages was made for a primarily personal reason. It is to be noted that the Cardozo case and the recent Cross case both relate to an assistant professor of foreign languages who took trips abroad into the countries where the languages were spoken and who later became elevated to the rank of professor.

The Circuit Court of Appeals (2d circuit) reversed the case and remanded the same to ascertain the portion of expenses which were taken for the maintenance of skills and that portion taken for personal entertainment (Cross v. U.S., 14 AFTR 2d 5479). The Appellate Court did not overrule the lower court in holding that the trip was not necessary. In the Cross case, however, the husband teacher took his wife along. No such fact presents itself in the matter before us. Other cases have supported the Cross and Anderson cases in holding that where there is a direct relationship between travel and the teacher's specialized field, deductions will be allowed. Thus, a mathematics instructor's course of a sabbatical summer in Europe was held not deductible (Dennehey v. Commission, 10 AFTR 2d 5796, 309 F. 2d 146), and a deduction was denied a guidance counselor for expenses of a South Pacific Study Cruise (Hier v. U. S., 13 AFTR 2d 1043). On the other hand, deduction to the extent of 80% of expenses of a cultural musical tour in Europe were allowed music teachers (Alan Thomas James et. al., paragraph 64,049 P-H Memo T.C.). Deduction of 50% was allowed an elementary school teacher where part of the sightseeing was spent in visits to various public schools (Sid Neschis, paragraph 63,191 P-H Memo T.C.).

Such a policy of allowance of deductions was enunciated by the Internal Revenue Service in Revenue Ruling 64-176, IRB 1964-23.

If, in the matter before us, it could be shown that the taxpayer's trip was made in order to secure a promotion, then the Cardozo case would be applicable. However, since no clear finding

to that effect can be made, I believe that the standard enunciated in the Cross case should be applied. The taxpayer here went by herself unaccompanied by any other adult for the purpose of maintaining her skills in the field of education and that of Russian culture. Furthermore, there is an insufficient basis to allocate any amount of the expenditure other than a mere nominal amount to personal entertainment. Even if such allocation should be attempted, it is to be noted the Federal government allowed amounts as taken by the taxpayer. Moreover, the refund requested amounts to less than \$100. I am, therefore, of the opinion that the taxpayer's application should be granted and the refund permitted. Kindly return the file after disposition.

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

/s/ MARTIN SCHAPIRO
Hearing Officer

MS:ca
Enc.

November 15, 1965 (Dec. 15, 1965)

/s/ E. H. BEST
Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

FAN PARKER

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 18 OF
THE TAX LAW FOR THE YEAR 1959

Fan Parker, the taxpayer herein, having duly filed an application for revision or refund of personal income taxes 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, 88 Centre Street, New York, New York on the 7th day of October, 1961, before Martin Schapiro, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared in person and was represented by Herbert H. Alpert, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a report of income for the year 1959 deducting from income in connection with employment the amount of \$2,881.50 as educational expense in connection with a trip to Russia; that a refund of \$94.88 was disallowed by the State Tax Commission on the ground that the said expense was a personal expense; that the taxpayer thereafter filed an application for refund of such taxes withheld.

(2) That during the year 1959 the taxpayer was employed as an assistant professor at Brooklyn College in the City of New York conducting and teaching courses in Russian culture and in the Russian language.

(3) That during such year the taxpayer took a trip to Russia during her summer vacation obtaining the approval of the college; that after the expiration of the trip, the taxpayer was promoted to the rank of associate professor; that such trip, however, was not taken either as a condition of the taxpayer's promotion or with an immediate view of enhancing her opportunity for promotion.

(4) That the taxpayer's activities in Russia consisted of visiting cultural and educational institutions, interviewing educators and taking films which were later made part of the curriculum in Russian culture; that the expenses incurred by the taxpayer in the visiting of any other countries in Europe were minimal.

(5) That although such trip was not necessary for the maintenance by the taxpayer for present position, such trip was necessary for the maintenance and improvement of the taxpayer's skills in teaching Russian language and Russian culture.

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

DETERMINES:

That the taxpayer properly deducted expenses occurred in making the trip to Russia; that, accordingly, the taxpayer is entitled to a refund of excess taxes paid in the sum of \$24.88 together with lawful interest, if any.

DATED: Albany, New York, this 29th day of December , 1965 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

Commissioner