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MEMORANDUM

Income Tax Determinations
A-2
Heath, Percy and
June

TO: Commissioners Murphy and Macduff

FROM: E. H. Best, Counsel

SUBJECT: Percy and June Heath, petitioners for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962

On November 24, 1965 a hearing was held at 80 Centre Street, New York, New York. Taxpayers were not personally present and appeared by their attorney, Harold E. Lovette, Esq.

The issue involved herein is whether claimed deductions for business expenses were (1) substantiated, and (2) ordinary and necessary in the production of income.

Taxpayers, residents of New York, filed a joint return for 1962, deducting (a) business expenses of \$7,584.76 claimed to have been incurred by Percy Heath, a professional musician, of which \$4,500 was claimed as "board and lodging" for 30 weeks of travel at \$150 per week, \$600 for uniforms, \$375 for uniform maintenance, \$975 for instrument cartage, \$200 for depreciation, \$389.76 for telephone, \$25 for union dues and \$520 for tips, and (b) life insurance premiums in the sum of \$1,170, and claimed an overpayment of \$71.04.

Audit changes dated September 8, 1964 disallowed \$3,500 of business expenses as excessive and unsubstantiated, allowing the balance of \$4,084.76 as a deduction. \$870 of life insurance premiums deducted was also disallowed as in excess of the legally permitted maximum, and recomputed the tax to show a liability for additional tax and interest of \$120.49.

Federal audit changes disallowed \$3,436.32 of taxpayers' claimed business expenses for the year 1962.

Taxpayers concede that \$870 of the claimed life insurance premiums is excessive pursuant to section 615(d)(1) of the Tax Law, but contend that the claimed business expenses were necessarily incurred. The only evidence produced at the hearing consisted of an affidavit of one Conrad Kirnan, taxpayers' business agent, relating to taxpayers' absence from home, but giving no dates, nor any details of expenses, and twelve hotel bills covering less than forty days out of thirty weeks claimed.

The hotel bills aggregated \$580 of which \$350 was for room charges and the balance for restaurant and other charges. Neither Conrad Kirnon nor either of the taxpayers appeared and taxpayers' attorney conceded that there was no other evidence as to any of the claimed expenses, nor could any additional information be furnished. The attorney also conceded that the taxpayers "would have to rely on the judgment of the Tax Commission" as to the claimed business expenses.

It is my opinion that \$4,084.76 adequately reflects the ordinary and necessary expenses incurred in the production of the taxpayers' income; that taxpayers have failed to produce any evidence sufficient to satisfy the burden of proof as to their claims of \$3,500 additional expenses as ordinary and necessary; nor have they furnished any substantiation of such claimed expenses; and based on the information adduced at the hearing, the exhibits submitted, the Federal audit change and the admissions of the taxpayers' counsel that no other evidence or information can be furnished, the notice of deficiency and statement of audit changes must be sustained.

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

/s/

E. H. BEST

Counsel

September 28, 1966

Enc.

AR:cp

14 (Oct. 6, 1966)

**STATE OF NEW YORK
STATE TAX COMMISSION**

**IN THE MATTER OF THE PETITION OF
PERCY & JUNE HEATH
FOR DETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEAR 1962**

Percy and June Heath having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962 (File No. 2-7197970) and a hearing having been held on November 24, 1965 at 80 Centre Street, New York, New York, at which the taxpayers' attorney, Harold E. Lovette, Esq. appeared and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a resident joint return for 1962, showing deductions of \$7,584.76 for business expenses incurred by Percy Heath in his occupation of professional musician, and \$1,170 for life insurance premiums.

(2) That a notice of deficiency was issued September 8, 1964, in the sum of \$120.49, based on disallowance of life insurance premiums in the amount of \$870, as excessive under section 615(d)(1) of the Tax Law; and disallowance of business expenses in the sum of \$3,900 as excessive and unsubstantiated, and the taxpayers' income tax recomputed.

(3) That Federal audit adjustments were issued from September 16, 1965 disallowing \$3,436.32 of taxpayers' claimed business expenses for 1962.

(4) That the taxpayer consents to the disallowance of \$870 for claimed deductions for life insurance premiums; that the taxpayers contend that Percy Heath, a professional musician, was required to be away from home for 30 weeks in 1962 and incur expenses for \$150 per week therefore, in addition to other business expenses.

(5) That except for hotel bills in the aggregate sum of \$580, the taxpayers have failed to produce any evidence to substantiate the claimed deductions for business expenses.

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

DECIDES:

(A) That for 1962 the taxpayers incurred ordinary and necessary business expenses in the sum of \$4,054.76 and that \$3,300 was properly disallowed as unsubstantiated and not shown to be expense, ordinary or necessary, in the production of income.

(B) That for 1962 the taxpayers were entitled to deduct life insurance premiums pursuant to section 615(d)(1) of the Tax Law in the sum of \$300 and that \$870 was properly disallowed as not deductible pursuant to statute.

(C) That, accordingly, the notice of deficiency imposing additional taxes upon the taxpayers for 1962, is correct; that the said notice of deficiency does not include any tax or other charges which could not have been lawfully

demanded and that the taxpayers' petition for a redetermination or refund with respect thereto be and the same hereby is denied.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

DATED October 10, 1966