

Income Tax Determination
Pelligra, Connie A-2

Commissioners Murphy and Macduff

Solomon Sles, Hearing Officer

CONNIE PELLIGRA

**Petition for Redetermination of
Deficiency of Personal Income
Tax Under Article 22 of the Tax
Law for Year 1961.**

A notice of hearing was mailed to the taxpayer scheduling a formal hearing to be held at the New York City office on December 15, 1965. The taxpayer was unable to appear since she now resides in Florida but submitted additional information and an affidavit in lieu of her appearance.

The question presented is whether the taxpayer is entitled to a deduction for child care and statutory credit of \$25.00 as unmarried "head of household" where the Internal Revenue Service, upon audit has disallowed such deduction upon the ground that same has not been substantiated.

The taxpayer, formerly known as Connie Longobardi was divorced from her former husband George Longobardi in June, 1960. During the year 1961, the taxpayer was gainfully employed and was the head of the household by reason of the fact that she was the sole support of her two minor children, Susan E. and George Longobardi, aged 8 and 5, respectively, who resided with her. During 1961 the taxpayer was required to expend the sum of \$16.00 per week to have a neighbor care for her children from 7:50 A.M. to 6 P.M. each week day while employed for purpose of enabling her to be gainfully employed; otherwise she would have been compelled to apply for welfare. On June 25, 1962, the Internal Revenue Service made a final audit of taxpayer's Federal return for 1961 and disallowed the sum of \$600 claimed as child support upon the ground that sufficient evidence was not submitted to substantiate such deduction. It appears that the neighbor had removed and taxpayer was unable to ascertain her whereabouts for purpose of submitting an affidavit to corroborate said expenditure. The taxpayer on her individual United States return for 1961 claimed to be unmarried "head of household". The United States Internal Revenue recomputed taxpayer's 1961 Federal income tax liability using the rates established for a married person filing a separate return. I believe this was an error. The amount involved is very small (less than \$30.00).

TO: Commissioners Murphy and Macduff

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RE: CONNIE PELLICHA

I place full credence upon the affidavit of the taxpayer and am of the opinion that she is entitled to the claimed deduction of \$400.00 for child care and is also entitled to statutory credit as "head of household" and recommend that the notice of deficiency be cancelled and a refund issued to taxpayer in the event that such refund was not previously made.

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

NOV 29 1966

DOLOMON 2102

Hearing Officer

/s/

MARTIN SCHAPIRO

Approved

SAUL HECKELMAN

/s/

Approved

SS:NN

(Dec. 8, 1966)

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....

IN THE MATTER OF THE ESTATE OF

OF

GERNIE FALLON

**FOR RECONSIDERATION OF A DEFICIENCY OF
PERSONAL INCOME TAX UNDER ARTICLE 22 OF
THE TAX LAW FOR THE YEAR 1961.**

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Gernie Fallon having filed a petition for
reconsideration of a deficiency of personal income tax under
Article 22 of the Tax Law for the year 1961 (File No. 1-4682112)
and a notice of hearing dated December 12, 1965 having been mailed
to the taxpayer scheduling a formal hearing to be held at 60 Centre
Street, New York, N. Y. on January 17, 1966 at 1:30 P.M., before
Solomon Sica, Hearing Officer of the Department of Taxation and
Finance and the taxpayer having been unable to appear at said
hearing because she is now a resident of Florida and having sub-
mitted additional information and an affidavit in lieu of her
appearance thereto, and the matter having been duly examined and
considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a U.S. Individual Income
Tax Return for the year 1961 as an unmarried "head of household"
on which she reported itemized deductions, claimed three
exemptions and also deducted \$600.00 for child care; that the
taxpayer filed a New York State Resident Return for the year 1961
in which she reported her Federal Adjusted Gross Income and also
reported the same deductions and exemptions as on her Federal
Return, took statutory credit of \$25.00 as head of household and

claimed a refund of \$55.36; that on June 25, 1962 the U.S. Internal Revenue Service made a final audit of taxpayer's income tax return for the year 1961 disallowing the \$500.00 claimed as child support upon the ground that she did not submit sufficient evidence to substantiate the deduction claimed; that the Internal Revenue Service recomputed the taxpayer's 1961 Federal income tax liability using the rates established for a married person filing a separate return; that on May 4, 1964 the Department of Treasury and Finance issued a Statement of Audit Changes adjusting the taxpayer's New York State personal income tax for the year 1961 to conform with the audit of her Federal Income Tax return for said year disallowing "one exemption, \$500.00" and allowing statutory credit of \$12.00 only "since it has been determined that a separate Federal income tax return was filed" and imposing additional personal income tax in the sum of \$30.50 plus interest in the sum of \$3.75 for total of \$34.25 and issued a notice of deficiency therefor.

(2) That the taxpayer Germa Polignio formerly known as Germa Longherdi was divorced from her former husband George Longherdi in June, 1960; that during the year 1961 the taxpayer was gainfully employed and was the head of the household by reason of the fact that she was the sole support of her two minor children, Susan E. Longherdi and George Longherdi, Jr., aged 9 and 8, respectively, who resided with her.

(3) That during the year 1961 the taxpayer was required to expend the sum of \$16.00 per week to have a neighbor care for her minor children during the period from 7:00 A.M. to 6:00 P.M. each week day while she was employed for the purpose of enabling taxpayer to be gainfully employed.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

NOTICES:

**That the statement of audit charges adjusting the
petitioner's New York State personal income tax for the year
1961 is incorrect; that the petition for redetermination is
granted and the notice of deficiency for such year is hereby
cancelled and revoked.**

Dated in the City of Albany the 27th day of December, 1966

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

President

SS:whl