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Income Tax Determinations
A-2
BUREAU OF LAW
MEMORANDUM
Taeffner, Alice + Wilbur E.

TO: Commissioners Murphy, Macduff and Conlon
FROM: Francis V. Dow, Hearing Officer
SUBJECT: WILBUR E. & ALICE TAEFFNER

For a redetermination of a deficiency or
for refund of personal income taxes under
Article 22 of the Tax Law for the year 1964

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on February 8, 1967. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith.

The taxpayers filed a New York income tax return for the year 1964 in which they claimed a deduction for charitable contributions in the amount of \$1,883 and a deduction for home office expense in the sum of \$300. A notice of deficiency and a statement of audit changes were issued disallowing \$1,000 of the contributions claimed and the \$300 claimed for office expense and determining that additional tax was due in the sum of \$130. The taxpayers claimed that the disallowed deductions should be allowed since they were normal and actual expenses.

The taxpayer Wilbur E. Taeffner is the resident vice president of the Reliance Insurance Company. He had his main office in New York City and has suboffices in Hempstead, Albany and Bridgeport, Connecticut.

The taxpayer in substantiations of his contributions submitted cancelled checks payable to The Cathedral of The Incarnation totalling \$329 and a letter from the dean of the church confirming that the taxpayer's pledge to the church of \$365 was paid in full. The dean's letter also stated that other cash payments were made by the taxpayers of which no record was kept, and that the taxpayers incurred expenses for luncheons they provided at their home and for the use of their automobile in connection with church work. The taxpayers submitted cancelled checks totalling \$256.22 which they claimed were payments for church and other organizations. Three of these checks totalling \$57.20 were made payable to business organizations. It was claimed that these three checks were given in payment for articles purchased for the church but no supporting bills were presented. The taxpayers were unable to substantiate the balance of their deduction for contributions which they claimed were made in cash

and consisted of clothing and furniture. Receipts were allegedly obtained for some of these contributions but could not be located. No other evidence was submitted to substantiate their contributions.

The office expense deduction of the taxpayers represented the pro rata portion of home expense attributable to the use of a room in the taxpayer's home as an office. The room was used approximately ten hours a week. The taxpayer Wilbur E. Taaffner was not required by his employer to perform services in his home. His work at home consisted of conferences with his personnel and study of reports. The taxpayer worked at home voluntarily and for his convenience.

The taxpayer did not substantiate that expenses incurred for his home office were ordinary and necessary. An employee who voluntarily uses his personal residence in the performance of his duties as an employee is not entitled to deduct any portion of the depreciation and expenses of maintaining his residence. Before an employee is allowed such a deduction, he must establish that as a condition of his employment he is required to provide his own space and facilities for performance of some of his duties (See Rev. Rul. 62-180; CB 1962-2, p. 52).

It is my opinion that the taxpayer has not substantiated that his contributions exceeded \$883 since he could not submit documentary support or any other sufficient evidence to show that they did exceed that amount. The church contributions of \$365 and other contributions supported by cancelled checks totalled \$678.42. The additional \$204.58 allowed the taxpayers is an adequate allowance for the taxpayer's expense incurred in the use of their automobile for church work, expenses incurred in providing church luncheons in their home and cash and other property donated to church and other charitable organizations which they could not fully substantiate. The position of the Internal Revenue Service is set forth in its public information sheet dated May 14, 1963 (657 CGR para. 6616). It provides for the allowance of unsubstantiated donations in the amount of \$56 for donations to church and \$26 for donations to other charitable organizations, provided that the taxpayer's oral statements are credible. However, the guideline is not rigid and permits allowance in excess of the \$78 if the evidence presented warrants a higher allowance.

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

/s/

FRANCIS V. DOW
Hearing Officer

FVD:aw
Enc.

AK 3-20-67
ms JH

March 15, 1967

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....
IN THE MATTER OF THE PETITION

OF

WILBUR E. AND ALICE BAFFNER

**FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1964**
.....

The taxpayers having duly filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1964, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on February 8, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer Wilbur E. Baffner appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a resident income tax return for the year 1964 in which they reported income of \$23,300; that the taxpayers claimed a deduction on their return for charitable contributions in the amount of \$1,000 and a deduction of \$300 for home office expense.

(2) That a notice of deficiency and a statement of audit changes (File No. 16377723) was issued determining additional tax and interest due in the sum of \$139.66 disallowing \$1,000 of the deduction claimed for contributions based on the taxpayer's inability to substantiate all contributions claimed, and also disallowed the deduction claimed for home office expenses on the basis that the

taxpayers did not substantiate (1) that as a condition for the taxpayer Wilbur H. Snoffner's employment, he was required to provide his own space and facilities for the performance of some of his duties; (2) that he regularly used a part of his home for that purpose; (3) what portion of his home was so used; (4) the extent of such use; and (5) the pro rata portion of his home expense was attributable to such use.

(3) That the taxpayers contributed the sum of \$365 to The Cathedral of The Incarnation in payment of a pledge; that the taxpayers further submitted cancelled checks totalling \$256.22 payable to charitable and other church organizations.

(4) That the taxpayers submitted cancelled checks payable to business organizations, which checks totalled \$57.20, that although the taxpayers did not present any supporting bills for the said checks made payable to the business organizations, they alleged that the cancelled checks represented purchases of items which were contributed to their church.

(5) That the taxpayers made other cash contributions to The Cathedral of The Incarnation, the amount of which the taxpayers could not substantiate by any documentary or other sufficient evidence; that the taxpayers in connection with church work incurred expenses for lunches and for the use of their automobile for which they were not reimbursed; that the taxpayers were unable to provide any documentary evidence or any sufficient evidence to show the amount of the expenses which they incurred for the said lunches, nor the number of miles traveled in their automobile for such church work.

(6) That the taxpayers claimed that they made other contributions to churches and other charitable organizations by cash payments and by gifts of property, and that they had received receipts for some

of these contributions which they were unable to produce; that the taxpayers did not produce any documentary or other sufficient evidence to show the amount of their other charitable contributions.

(7) That the taxpayer Wilbur E. Shaffer is the resident vice president of the Alliance Insurance Company; that the said taxpayer used a room in his home as an office for the purpose of holding conferences with his personnel and for work on reports for his company; that the taxpayer worked at home regularly on the average of ten hours a week; that the taxpayer's home expenses amounted to \$3,625; that the room used as an office in the taxpayer's home comprised approximately one-tenth of the floor space of the taxpayer's home; that the use of the taxpayer's home for the performance of his duties was voluntary; that he was not required to use the room in his home as a condition of his employment; that the use of a room in the taxpayer's home for the performance of duties as an employee was for the convenience of the said taxpayer.

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

DECIDES:

(A) That the taxpayers are allowed deductions for charitable contributions in the amounts of \$365 paid on their pledge to the Cathedral of The Incarnation and \$256.22 paid to church and other charitable organizations as set forth in finding of fact number 3.

(B) That the taxpayers are also allowed deductions of \$57.20 expended to purchase items given to their church as set forth in finding of fact number 4.

(C) That in addition, the taxpayers are allowed the amount of \$204.30 contributed in cash and property given to other churches and charitable organizations and for expenses incurred in the use of

the automobile for church work and for expenses incurred in providing church luncheons in their home as set forth in findings of fact numbers 5 and 6.

(D) That the taxpayers did not substantiate that their charitable contributions exceeded \$500 the total of the amounts hereinabove allowed since they were unable to submit any documentary support or other sufficient evidence that their deductions exceeded \$500.

(E) That the expenses incurred by the taxpayers for the use of a room as an office was not deductible by them since the use of the room for the performance of duties as an employee was done so voluntarily and for the convenience of the taxpayer, and accordingly were not ordinary and necessary expenses incurred for the production of income.

(F) That the notice of deficiency and statement of audit changes (File No. 10579785) determining additional income tax and interest due in the sum of \$139.65 is correct and does not include any tax or other charges which could not have been lawfully demanded and the taxpayers' petition for redetermination of a deficiency of personal income tax for the year 1964 with respect thereto to and the same is hereby denied.

Dated: Albany, New York this 23rd day of March, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
CHAIRMAN

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER