

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

MEMORANDUM

*Income Tax Determination**A-2**Benjamin, William A.
& Elly N.*

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of
WILLIAM A. AND ELLY N. BENJAMIN
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 January 25, 1968. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The taxpayers filed resident income tax returns for the year 1964 in which they claimed a deduction for contributions in the sum of \$519.00 and other deductions totaling \$1,014.00. \$1,014.15 of the deduction represented 20% of the rent of the taxpayer's apartment. The taxpayer, William A. Benjamin, is the President of W. A. Benjamin, Inc., a publishing company. It was claimed that the taxpayer was required to spend considerable time outside of normal office hours at home reviewing and approving manuscripts.

A notice of deficiency and a statement of audit changes for the year 1964 were issued on April 24, 1967 (File No. 26246777) which determined additional income tax and interest due in the sum of \$154.67 on the basis that the taxpayers substantiated \$154.00 of their claim for contributions and failed to substantiate \$365.00 thereof. They also failed to substantiate other deductions of \$1,014.15, the amount deducted by them for the use of a portion of their apartment which they alleged was used as an office for business purposes.

The taxpayers did not contest the amount disallowed of their deduction claimed for contributions.

The taxpayers, who did not appear at the hearing but were represented, failed to submit any documentary or other sufficient evidence to substantiate the deduction claimed for the use of part of their apartment as an office.

Rev. Rul. 62-180, CB 1962-2, p. 52 provides, in part, that:

"The burden of proof rests upon the taxpayer to establish (1) that, as a condition of his employment, he is required to provide his own space and facilities for performance of some of his duties, (2) that he regularly uses a part of his personal residence for that purpose, (3) the portion of his personal residence which is so used, (4) the extent of such use, and (5) the pro rata portion of the depreciation and expenses for maintaining his residence which is properly attributable to such use."

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

/s/

FRANCIS V. DOW

Hearing Officer

February 14, 1968
FVD:nn

Enc.

2-26-68

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

WILLIAM A. AND ELLY N. BENJAMIN

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 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 January 25, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented, 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 claimed a deduction for contributions in the sum of \$519.00 and claimed other deductions totaling \$1,044.00, \$1,014.15 of which other deductions represented 20% of the rent of the taxpayers' apartment which they claimed was used for business purposes.

(2) That a notice of deficiency and statement of audit changes were issued on April 24, 1967 (File No. 26246777) which determined additional tax and interest due for the year 1964 in the sum of \$154.67 on the basis that the taxpayers substantiated

\$154.00 and failed to substantiate \$365.00 of their deduction claimed for contributions and that they failed to substantiate other deductions of \$1,014.15, the amount claimed by the taxpayers for use of a portion of their apartment which they alleged was used as an office for business purposes; that the taxpayers did not contest the disallowance of \$365.00 of the deduction claimed by them for contributions.

(3) That the taxpayer, William A. Benjamin, is the President of W. A. Benjamin, Inc.; that W. A. Benjamin, Inc. is a publishing company; that the taxpayer claimed that he was required to spend considerable time outside normal office hours at home reviewing and approving manuscripts and that he could not perform such work in the office of his employer.

(4) That the taxpayers failed to establish by sufficient documentary or other satisfactory evidence that William A. Benjamin (1) as a condition of his employment, was required to provide his own space and facilities for performance of his duties, (2) that he regularly used a part of his personal residence for that purpose, (3) the portion of his personal residence which was so used and the extent of such use, and (4) the pro rata portion of the expenses for maintaining his residence which was properly attributable to such use.

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

DECIDES:

(A) That the taxpayers failed to substantiate other deductions in the amount of \$1,014.15, the amount claimed by them for home office expenses, since they did not submit

sufficient documentary or other satisfactory evidence to support their claim and accordingly, the amount claimed was properly disallowed.

(3) That the notice of deficiency and statement of audit changes determining additional income tax and interest due in the sum of \$154.67 are correct and do not include any tax or charges which could not have been lawfully due and the taxpayers' petition for refund of a deficiency of personal income tax for the year 1964 with respect thereto be and the same is hereby denied.

DATED: Albany, New York this 13th day of March , 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

A. BRUCE MANLEY
COMMISSIONER

/s/

SAMUEL E. LEPLER
COMMISSIONER