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## BUREAU OF LAW

MEMORANDUM

*Income Tax Determinations*  
*A-Z*  
*Holborow, William C*  
*and Mae*

TO: **State Tax Commission**

FROM: **Francis V. Dow, Hearing Officer**

SUBJECT: **In the Matter of the Petition of WILLIAM C. AND MAE HOLBOROW 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 23, 1968. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith. The taxpayers did not appear but were represented by their attorneys.

The taxpayers filed resident income tax returns for the year 1964 in which they reported total income of \$19,400.91. They claimed a deduction for charitable contributions in the amount of \$1,300.00 and a deduction for business expenses of the taxpayer, William C. Holborow, in the amount of \$3,000.00. On December 12, 1966 a notice of deficiency and a statement of audit changes were issued for the year 1964 (File No. 2516005) determining additional income tax and interest due in the sum of \$418.00 on the basis that the taxpayers were unable to substantiate \$787.00 of their deductions claimed for charitable contributions and that the taxpayer, William C. Holborow, did not furnish adequate substantiation to support the entire amount of business expenses claimed to have been incurred in his occupation and that he did not furnish acceptable evidence that all of the expenses were ordinary and necessary or reasonable in amount and were adjusted as follows:

	<u>Claimed</u>	<u>Substantiated</u>	<u>Disallowed</u>
Out-of-pocket expenses	\$ 100	\$ 0	\$ 100
Gifts	250	100	150
Auto expenses	720	0	720
Entertainment expenses	<u>2,705</u>	<u>540</u>	<u>2,165</u>
Totals	\$3,775	\$720	\$3,055

The taxpayers did not contest the disallowance of \$787.00 claimed for contributions, \$100.00 for out-of-pocket expenses and \$70.00 for gifts.

The taxpayer, William C. Holberow, is employed by F. W. Woolworth Co., Inc., as a buyer of textiles. He is reimbursed for his travel expenses by his employer. He is not reimbursed for his other business expenses. It was claimed by the taxpayer that one-third of the expense incurred in the use of a Cadillac, one of three vehicles owned by the taxpayer, was a business expense. No evidence was submitted to show the number of miles traveled by the vehicle for business purposes and for nonbusiness purposes. No documentary or other sufficient evidence was submitted to show the expense of operating the Cadillac other than the cost of insurance.

The taxpayer, by his representative, submitted a diary to show his expenses for entertainment. No evidence was produced to show how the diary was prepared. The representative alleged that it was necessary for the taxpayer to entertain sellers in order to get better items and better delivery for lower prices and that it was necessary to convince some sellers to sell to F. W. Woolworth, Inc.; that it is not clear from the diary whether the alleged entertainment expenses were ordinary and necessary expenses incurred in entertaining sellers as contended by the taxpayer's attorney or whether such expenses were personal and incurred by the taxpayer in lunching with other personnel of F. W. Woolworth, Inc. Since no other evidence was submitted to support the taxpayer's claim, it is my opinion that the taxpayer has not substantiated his entertainment expenses or that they were ordinary and necessarily incurred in his business.

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

/s/

FRANCIS V. DOW

HEARING OFFICER

FVD:jm  
Enc.  
April 4, 1968

4-17-68

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

-----: |  
IN THE MATTER OF THE PETITION |  
OF |  
WILLIAM G. AND MAE HOLBEROW |  
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 herein, 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 the hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on January 22, 1965 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers did not appear but were represented by an attorney and no testimony under oath having been taken, 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 total income of \$39,480.91 and claimed a deduction for contributions in the sum of \$1,388.00 and a deduction for business expenses incurred in connection with taxpayer, William G. Holberow's position, which were not reimbursed by his employer.

(2) That on December 12, 1966 a notice of deficiency and a statement of audit changes were issued for the year 1964 (File No. 2510665) determining additional income tax and interest due in the sum of \$418.00 on the basis that the taxpayers were disallowed \$747.00 of the amount claimed for charitable contributions which they were unable to substantiate and that the taxpayers did not furnish adequate substantiation to support the entire amount of

business expenses claimed and did not furnish acceptable evidence that all of the expenses were ordinary and necessary or reasonable in amounts and were adjusted as follows:

	<u>Claimed</u>	<u>Substantiated</u>	<u>Disallowed</u>
Out-of-pocket expenses	\$ 100	\$ 0	\$ 100
Gifts	250	180	70
Auto expenses	720	0	720
Entertainment expenses	2,705	540	2,165
Totals	\$3,775	\$720	\$3,055

(3) That the taxpayers did not contest the disallowance of \$720.00 which they claimed for contributions and the disallowance of \$100.00 claimed for use of out-of-pocket expenses and \$70.00 claimed for gifts.

(4) That the taxpayer, William C. Holberow, is employed by F. W. Woolworth, Inc. as a buyer of textiles; that the taxpayer is reimbursed for traveling expenses by his employer; that the taxpayer was not reimbursed for his other business expenses.

(5) That the taxpayer claimed that one-third of the expense incurred in the use of a Cadillac, one of three automobiles owned by the taxpayer, was a business expense; that no evidence was submitted by the taxpayer to show the number of miles traveled by the Cadillac for business purposes and for nonbusiness purposes; that no documentary or other sufficient evidence was submitted to show the expense of operating the Cadillac other than the cost of insurance which was in the amount of \$327.00.

(6) That the taxpayer, by his representative, submitted a diary to show his expenses for entertainment; that no evidence was produced to show how the diary was prepared and maintained; that it was alleged it was necessary for the taxpayer to entertain sellers in order to get better items and better deliveries at lower prices and that it was necessary to convince some sellers to sell to F. W. Woolworth, Inc.; that it is not clear from the diary whether

the alleged entertainment expenses were ordinary and necessary expenses incurred in entertaining sellers as contended by the taxpayer's attorney or whether such expenses were personal expenses incurred by the taxpayer in lunching with other personnel of F. W. Woolworth, Inc.

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 their automobile expenses in the amount of \$720.00, since they did not submit sufficient documentary or other satisfactory evidence to support their claim and, accordingly, the amount claimed was properly disallowed.

(B) That the taxpayers did not substantiate the amount claimed for unreimbursed entertainment expenses, since the taxpayers did not show that they were ordinary and necessary expenses incurred in the business of the taxpayer, William C. Melberow.

(C) That the notice of deficiency and the statement of audit charges determining additional income tax and interest due in the sum of \$418.00 are correct and do not include any tax or other charges which could not have been lawfully demanded and that the taxpayers' petition for a redetermination of a deficiency or for refund of personal income taxes for the year 1964 with respect thereto be and the same is hereby denied.

**DATED:** Albany, New York on this 30th day of April, 1968.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

A. Bruce Manley  
**Commissioner**

/s/

Samuel E. Lepler  
**Commissioner**