

MEMORANDUM *McAuliffe, Michael J.*
Sarah E.

TO: **The State Tax Commission**

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

SUBJECT: **In the Matter of the Petition of MICHAEL J. AND SARAH E. McAULIFFE 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 24, 1964. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith.

The taxpayer filed a New York income tax return for the year 1964 in which they reported total income of \$18,741.00 and claimed a deduction for charitable contributions in the amount of \$1,150.00. A notice of deficiency and a statement of audit changes were issued determining additional tax and interest due in the sum of \$20.51 on the basis that as a result of audit their contributions were adjusted as follows:

	<u>Per Return</u>	<u>Per Audit</u>	<u>Adjustment</u>
St. Adalbert's Church	\$300.00	\$225.00	\$75.00
St. Peter's Church	225.00	.00	225.00
Miscellaneous Charities	125.00	50.00	75.00
Total Disallowed			\$375.00

The taxpayer testified that he attended mass daily. He estimated that during the year he went to mass at St. Peter's Church, located near his place of employment in lower Manhattan on 225 weekdays. On each occasion, he contributed \$1.00 in cash at the collection. On Sundays and on other days during the week, he attended St. Adalbert's Church. St. Adalbert's Church does not have a collection on weekdays. It does not have a weekly envelope system. The taxpayer computed his contributions to St. Adalbert's Church on 20 Sundays and Holy Days of Obligation as follows:

	<u>Collection on Weekdays</u>	<u>First Seat Collection</u>	<u>Second Seat Collection</u>
Myself	\$.10	\$5.00	\$1.00
Wife	.10	2.00	1.00
Daughter (age 20)	.10	1.00	.50
Son (age 15)	.10	.25	.25
Daughter (age 11)	.10	.25	.25
Total	\$1.50	\$9.50	\$3.00

Total weekly contribution \$12.00	
Total annual contribution (\$12.00 x 52)	624.00
Plus \$45.00 extra contributions on Easter and Christmas	45.00
Total Annual Contributions	\$669.00

The taxpayer submitted two cancelled checks of \$50.00 each payable to St. Adolph's Church which the taxpayer said were for Christmas and Easter contributions. He also submitted seven other checks in the sum of \$50.00 which were payable to St. Adolph's Church which he said were contributions for special church functions such as luncheons. In addition, the taxpayer submitted cancelled checks totaling \$84.00 payable to various charities and other church organizations.

The taxpayer was allowed, on the basis of their 1954 return, \$78.00 for contributions which they could not substantiate by documentary evidence in accordance with the New York district guideline which provides that where an auditor requires receipts and other written proof for charitable contributions, the auditor making the examination is authorized to allow up to \$78.00 (\$1.50 per week) in charitable deductions on a joint return provided the taxpayer's oral statements were credible. See Internal Revenue Service Public Information Release, May 14, 1955, 607 C.B. Paragraph 6014. The public information release states that the guideline is not an automatic allowance or a rigid limit if the auditor concludes that more than \$78.00 should be allowed. A larger deduction can be recommended for approval.

In the matter of *Shideman*, 70 Misc 1947 - 22, 26 Misc 133 the Tax Court permitted charitable contributions totaling \$2,000.00 where the only evidence in substantiation was a copy of the taxpayer's joint return and the petitioner's testimony under oath. In that case, the taxpayer claimed total contributions of \$2,500.00 and reported adjusted gross income of \$24,400.00. The Tax Court quoted part of the decision in the case of *Smith*, 128 F.2d 1000, 140 U.S. 417, 420 (1921), as follows:

"Undoubtedly, as a general rule, positive testimony as to a particular fact, uncontradicted by any one, should control the decision of the court; but that rule admits of many exceptions. There may be such an inherent improbability in the statements of a witness as to induce the court or jury to disregard his evidence, even though absent of any direct conflicting testimony. It may be contradicted by the facts as shown or completely as by direct adverse testimony; and there may be so many omissions in his account of particular transactions, or of his own conduct, as to discredit his

whole story. His manner, too, of testifying may give rise to doubts of his sincerity, and create the impression that he is giving a wrong coloring to material facts. All these things may properly be considered in determining the weight which should be given to his statements, although there be no adverse verbal testimony against him."

In 1941, the taxpayer reported total income of \$12,000.71 and claimed a deduction for contributions in the amount of \$1,100.00 and on a Federal audit of his 1941 return, the taxpayer's deduction for contributions was adjusted by allowing \$200.00 and disallowing \$900.00. In 1942, the taxpayer reported total income of \$12,100.00 and claimed a deduction for contributions in the amount of \$1,100.00 and on a Federal audit of his return for 1942, the taxpayer's deduction for contributions was adjusted by allowing \$200.00 and disallowing \$900.00.

I believe the taxpayer's testimony that he contributed more than \$200.00 allowed on audit. Since the churches to which contributions were made had no carrying system, the taxpayer had no way to substantiate their contributions. However, since the claim for contributions was based on an estimate, it is my opinion that the entire amount of their claim should not be allowed but that they should be allowed \$200.00 following the treatment given the taxpayer on the Federal audit of their 1941 and 1942 returns. The taxpayer indicated that he is willing to accept such an allowance.

For the reasons stated above, I recommend that the decision of the State Tax Commission upholding the notice of deficiency of additional tax and interest by refusing to allow \$200.00 and as modified carrying the taxpayer's position to substantially in the form contained herein.

/s/

FRANCIS V. DOW

FVD:lp
By,
February 26, 1948

3-5-68

**STATE OF NEW YORK
STATE TAX COMMISSION**

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IN THE MATTER OF THE PETITION :
OF :
MICHAEL J. AND SARAH E. MANLIFF :
FOR A REDETERMINATION OF A DEFICIENCY :
OR FOR REVIEW OF PERSONAL INCOME TAXES :
UNDER ARTICLE 23 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 23 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, 60 Centre Street, New York, New York on January 24, 1966 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Michael J. Manliffe, appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a New York income tax return for the year 1964 in which they reported total income of \$18,741.00 and claimed a deduction for charitable contributions in the amount of \$1,150.00.

(2) That a notice of deficiency and a statement of audit changes for the year 1964 (File No. 14239477) were issued on January 16, 1967 determining additional income tax and interest due in the sum of \$36.51 on the basis that as a result of audit, the taxpayers' contributions were adjusted as follows:

	<u>St. Adalbert</u>	<u>St. Peter</u>	<u>Adjustment</u>
St. Adalbert's Church	\$1000.00	\$225.00	\$1275.00
St. Peter's Church	\$225.00	.00	\$225.00
Miscellaneous Charities	\$125.00	\$4.00	\$129.00
Total Disallowed			\$1629.00

(3) That the taxpayer, Michael J. Macaliffe, is an accountant and is employed in New York City; that the said taxpayer estimated his contributions as follows:

St. Adalbert's Church

	<u>Collection</u> <u>St. Adalbert</u>	<u>First Seat</u> <u>Collection</u>	<u>Second Seat</u> <u>Collection</u>
Husband	\$.10	\$2.00	\$1.00
Wife	.10	2.00	1.00
Daughter (age 20)	.10	1.00	.50
Son (age 19)	.10	.25	.25
Daughter (age 11)	.10	.25	.25
Total	<u>\$1.50</u>	<u>\$6.50</u>	<u>\$3.00</u>

Total weekly contribution, \$12.00

Total annual contribution (\$12.00 x 50)

Plus \$43.00 extra contributions
on Easter and Christmas

\$600.00

 20.00

Total Annual Contributions

\$620.00

Special Church Functions -- St. Adalbert's Church

\$50.00

St. Peter's Church

\$1.00 on 225 weekdays

\$225.00

Miscellaneous Charities

\$125.00

(4) That the taxpayer, Michael J. Macaliffe, attended mass daily during the year either at St. Peter's Church or at St. Adalbert's Church; that St. Peter's Church is located in Lower Manhattan near the taxpayer's place of employment; that neither church has an envelope system for contributions; that St. Adalbert's church does not have collection at masses celebrated on weekdays other than holy days; that St. Peter's Church has a collection at masses celebrated on weekdays.

(5) That the taxpayer submitted two cancelled checks of \$50.00 each, payable to St. Adalbert's Church which were for his Christmas and Easter contributions; that the taxpayer submitted seven other checks payable to St. Adalbert's Church, which checks total \$50.00, which were contributions for special church functions; that the taxpayer submitted cancelled checks totaling \$54.00 payable to various charities and other church organizations.

(6) That the taxpayer made cash contributions to St. Peter's Church when he attended mass there on weekdays, the amount of which was not substantiated by any documentary evidence; that the taxpayer made cash contributions to St. Adalbert's Church, the amount of which was not substantiated by any documentary evidence.

(7) That in 1961, taxpayers reported total income of \$15,045.71 and claimed a deduction for contributions in the amount of \$1,150.00; that on a Federal audit of their 1961 return, the taxpayers' deduction for contributions was adjusted by allowing \$885.00 and disallowing \$267.00; that in 1962, the taxpayers reported total income of \$15,167.69 and claimed a deduction for contributions in the amount of \$1,100.00; that on a Federal audit of their return for 1962, the taxpayers' deduction for contributions was adjusted by allowing \$800.00 and disallowing \$300.00.

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

DECIDES:

(A) That the taxpayers are allowed a deduction for charitable contributions in the amount of \$800.00 of which \$504.00 was substantiated by cancelled checks as set forth in Finding of Fact No. 5.

(B) That, accordingly, the taxpayers' personal income tax

Liability for 1964 is recomputed as follows:

Contributions claimed	\$1,190.00
Contributions allowed	— 200.00
Contributions disallowed	990.00
Taxable income per return	\$13,891.00
Corrected taxable income	13,971.00
Tax on corrected taxable income	713.04
Tax credit	— 22.00
Corrected tax	691.04
Tax per return	— 200.00
Additional personal income tax due	491.04
Interest computed to January 16, 1967	1.95
Total tax due and interest	\$ 34.99

(3) That the notice of deficiency and statement of audit charges (File No. 14830477) determining additional income tax and interest is modified by annulling the amount of \$21.02 therefrom; that the balance of the notice of deficiency in the modified amount of \$34.99 is affirmed and that such amount is correct and lawfully due and owing together with interest and other charges and does not include any other taxes or charges which are not lawfully due and owing.

Dated: Albany, New York this 25th day of March, 1968.

STATE TAX COMMISSION

/s/ Joseph H. Murphy
COMMISSIONER

/s/ A. Bruce Manley
COMMISSIONER

/s/ Samuel E. Lepler
COMMISSIONER