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STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION  
OF  
ELIZA C. MERRILL  
FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1964  
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The taxpayer having filed a petition for 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 26, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer did not appear but was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a resident income tax return for the year 1964 in which she reported total New York income of \$27,752.54 and claimed deductions for medical expenses of \$3,160.22 and contributions of \$1,243.34.

(2) That a notice of deficiency and a statement of audit changes were issued for 1964 on June 26, 1967 (File No. 26067104) which determined additional personal income tax and interest due in the sum of \$160.25 on the basis that as a result of audit,

claimed medical expenses of \$808.39 and contributions of \$607.50 were disallowed.

(3) That the taxpayer did not contest the disallowance of \$607.50 which she claimed for contributions.

(4) That the taxpayer claimed medical expenses of \$556.62 for plane fare to and from Florida during the winter for herself and a nurse alleging that she went to Florida on her doctor's orders to ameliorate a case of spinal osteoarthritis; that the taxpayer suffered from spinal osteoarthritis for a number of years; that the taxpayer usually spent her winters in Florida; that the petitioner failed to show by documentary or other sufficient evidence that her trip to Florida was undertaken for medical purposes other than merely improving her general health, or that she incurred any expense in making the trip to Florida.

(5) That the taxpayer did not show by documentary or other sufficient evidence which she claimed was deductible, other medical expenses of \$251.77.

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

**DECIDES:**

(A) That the taxpayer did not substantiate medical expenses in the amount of \$808.39 disallowed on audit of her return by documentary or other sufficient evidence, nor did she show that her trip to Florida was undertaken for medical reasons other than merely improving her general health.

(B) That accordingly, the notice of deficiency and statement of audit changes for the year 1964 (File No. 26067104) are correct and do not include any tax or other charges which could

not have been lawfully demanded; that the taxpayer's petition for redetermination of a deficiency or for refund of personal income taxes for the year be and the same is hereby denied.

DATED: Albany, New York on this 1st day of April, 1968.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

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**President**

/s/

A. BRUCE MAWLEY

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**Commissioner**

/s/

SAMUEL E. LEPLER

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**Commissioner**

## BUREAU OF LAW

## MEMORANDUM

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: ELIZA C. MERRILL

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 26, 1968. The taxpayer did not appear but was represented. The exhibits and the evidence produced were as shown in the stenographic minutes submitted herewith.

The taxpayer filed a resident tax return for the year 1964 in which she reported total New York income of \$27,752.<sup>54</sup> and claimed deductions for medical expenses of \$3,160.22 and contributions of \$1,243.<sup>34</sup>. A notice of deficiency and a statement of audit changes for 1964 were issued on June 26, 1967 (File No. 26067104) which determined additional tax and interest due in the sum of \$160.25 on the basis that, as a result of audit, claimed medical expenses of \$808.39 and contributions of \$607.<sup>90</sup> were disallowed. The taxpayer did not contest the disallowance of \$607.<sup>90</sup> which she claimed for contributions.

The taxpayer claimed \$556.62 for medical expenses for plane fare to and from Florida during the winter for herself and nurse alleging that she went to Florida to ameliorate a case of spinal osteoarthritis on her doctor's orders. It appears that she has had this disease for a number of years and usually spent her winters in Florida. The taxpayer failed to show by documentary or other sufficient evidence that the trip was not made for the purpose of improving her general health or that she incurred any expense in making the trip to Florida.

Section 1.213-1(e)(iv) of the Internal Revenue Regulations provides that:

"Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for 'transportation primarily for and essential to medical care' shall not include the cost of any meals and lodging while away from home

receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. \* \* \* ."

The taxpayer did not show by documentary or other sufficient evidence other medical expenses of \$251.77 which she claimed were deductible.

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

/s/

FRANCIS V. DOW

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Hearing Officer

FVD:dv  
Enc.  
March 18, 1968

3-26-68