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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations**A-2**Roche, Rita M.*

TO: The State Tax Commission

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: Application of Rita M. Roche for  
Revision or Refund of Personal  
Income Taxes under Article 22 of  
the Tax Law for the Year 1961

Petition of Rita M. Roche for  
Redetermination of a Deficiency or  
for Refund of Personal Income Taxes  
under Article 22 of the Tax Law for  
the Year 1962

A joint hearing on the above entitled application and petition was held before me at the office of the State Tax Commission, 60 Centre Street, New York, New York, on November 14, 1967. The appearances and exhibits were as noted on the transcript.

The issues involved disallowance of claimed deductions for (1) "transportation expenses" between taxpayer's home and her office, and (2) "small office expenses" for contributions for gifts to fellow employees and expense of office parties.

Taxpayer, a resident of North Bergen, New Jersey, was employed by Standard Oil Company of New Jersey, at 30 Rockefeller Plaza, New York City. She filed nonresident income tax returns for 1961 and 1962, reporting total New York income of \$8,429.81 for 1961 and \$8,739.20 for 1962. In computing total New York income she deducted "transportation expenses" of \$371.00 for each year. "Transportation expenses" consisted of the cost of travel between her home and her office. In addition, the taxpayer included in her New York itemized deductions claimed "small office expenses" in the amount of \$125.00 for 1961 and \$125.00 for 1962. "Small office expenses" consisted of her contributions for gifts to fellow employees and expense of office parties.

The Income Tax Bureau disallowed the deductions for transportation and office expenses taken on the 1961 return, on the ground that the items were personal, computed total New York income at \$8,000.81, computed New York itemized deductions at \$976.18, and adjusted her refund, accordingly, from \$95.93 as claimed on the return, to \$27.48, by undated voucher (File No. 1-5875445). For 1962 only the deduction of \$371.00 for transportation was disallowed as personal (the deduction of \$125.00 for office expense was allowed for 1962), total New York income

computed at \$9,110.20 and her refund for such year, accordingly, adjusted from \$97.40 as claimed on the return, to \$78.94, by voucher dated August 20, 1963 (File No. 2-7113180).

Taxpayer filed timely application for refund for 1961 on September 24, 1962 and timely demand for a hearing on December 2, 1962 after denial of her application on November 20, 1962. Taxpayer filed a timely claim for refund for 1962 on September 10, 1963 and timely petition for refund on February 3, 1964 after denial of her claim on December 7, 1964. Taxpayer contended that her deductions were allowable under section 612 of the Tax Law and under the Internal Revenue Code, and that the Treasury Department had not disallowed them.

Taxpayer did not appear in person at the hearing and no sworn testimony or exhibits were offered by her representative who declined an offer of adjournment in order to permit her to testify. Taxpayer's attorney did not raise any issue as to the disallowance of claimed office expense, and agreed that the sole issue involved the transportation expense deductions.

Although the deduction for small office expense was allowed for 1962 and is not in issue for that year, it should be noted that deductions for contributions for gifts to fellow employees and expense of office parties are not allowable under the Internal Revenue Code or the Tax Law and disallowance of such deductions as personal expense for the year 1961 was proper.

Section 162 of the Internal Revenue Code allows deduction for expenses ordinary and necessary in carrying on a trade or business. Section 212 of the Internal Revenue Code allows deduction for expenses ordinary and necessary for production or collection of income. Section 612(d)(3) of the Tax Law [applicable to nonresidents pursuant to the provisions of section 635(c)(1)] allows deductions for expenses ordinary and necessary for the production or collection of income subject to taxation under Article XX.

Claimed deductions for contributions for gifts to fellow employees and for parties have been held improper and disallowances of such deductions sustained, *Holan v. C. E. A.*, 259 F. 2d 100, 11 TCM 600, Dec. 15, 1951(M); *C. E. Russell*, 11 TCM 134, Dec. 18, 1950(M); *J. A. Richmond*, 65-1 USTC 9341.

Commutation expense is specifically excluded as deductible by an employee under Federal Income Tax Regulation 1.62-1(g); specifically excluded as deductible as a business expense under

Federal Income Tax Regulation 1.162-2(b); specifically excluded as deductible under Regulation 20 NYCRR 253.2(f); and disallowance of such deductions has been consistently held to be proper, Steinhart v. C.I.R., 335 F. 2d 496, Ticwell v. C.I.R., 298 F. 2d 884, and other cases too numerous to cite.

Accordingly, I am of the opinion that the Income Tax Bureau properly disallowed taxpayer's deductions for claimed transportation expenses and office expenses, and that taxpayer's application and petition should both be denied.

The determination and the decision of the Tax Commission should be substantially in the forms submitted herewith.

/s/

ALFRED RUBINSTEIN

HEARING OFFICER

AR:jmm  
Enc.  
March 1, 1968

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**STATE OF NEW YORK  
STATE TAX COMMISSION**

**.....**  
**IN THE MATTER OF THE APPLICATION**

**OF**

**RITA M. ROSEN**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 22 OF THE  
TAX LAW FOR THE YEAR 1961**  
**.....**

Rita M. Rosen having filed an application for revision or refund of personal income taxes under Article 22 of the Tax Law for the year 1961, and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, at 80 Centre Street, New York, New York, on November 14, 1967 at which hearing the taxpayer appeared by counsel, Gabriel T. Sap, Esq., and the matter having been duly examined and considered,

**The State Tax Commission hereby finds:**

(1) That in 1961 the taxpayer was a resident of the State of New Jersey and employed in New York by Standard Oil Company of New Jersey; that for 1961 the taxpayer filed a personal income tax nonresident return reporting total New York income of \$8,429.81; that for 1961 the taxpayer reported New York itemized deductions of \$1,162.18; that on her return the taxpayer claimed a refund of \$96.93 as overpayment of income taxes withheld.

(2) That by income tax refund voucher (File No. 1-9876665) the Income Tax Bureau computed the taxpayer's 1961 total New York income at \$8,800.81 by disallowance of the deduction therefrom in the sum of \$371.00 claimed as transportation expenses; that the Income Tax Bureau recomputed the taxpayer's New York itemized deductions at \$976.18 by disallowance of a deduction in the sum of \$186.00 claimed as office expenses; that the Income Tax Bureau, accordingly, computed

a net overpayment of taxpayer's income taxes in the sum of \$27.48.

(3) That the sum of \$371.00 deducted by the taxpayer in computing her 1961 total New York income and claimed as transportation expense was her cost of traveling between her home and her regular place of employment; that the sum of \$186.00 included by the taxpayer in her New York itemized deductions represented contributions by her for gifts to fellow employees and expense of office parties.

(4) That the taxpayer filed a timely application for refund on September 24, 1962; that taxpayer's application was denied on November 20, 1962; that taxpayer filed a timely demand for hearing on December 2, 1962.

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

**DETERMINES:**

(A) That transportation expense incurred by the taxpayer in the sum of \$371.00 in 1961 was commutation expense; that the deduction taken by the taxpayer from her total New York income for such transportation expense was not an allowable deduction within the meaning of section 632 or section 635 of the Tax Law, and was properly disallowed; that taxpayer's total New York income for 1961 was \$8,800.81.

(B) That office expense incurred by the taxpayer in the sum of \$186.00 in 1961 was neither ordinary nor necessary in the production of her income, nor directly connected to her occupation; that such deduction was not allowable under section 632 or section 635 of the Tax Law and was properly disallowed; that taxpayer's total New York itemized deductions for 1961 were in the total sum of \$976.18.

(C) That, accordingly, the taxpayer's overpayment of income taxes withheld for 1961 was properly computed at \$27.48, and that

taxpayer's application for refund in excess thereof be and the same is hereby denied.

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~~

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION** :  
**OF** :  
**RITA M. ROCHE** :  
**FOR REDETERMINATION OF A DEFICIENCY** :  
**OR FOR REFUND OF PERSONAL INCOME** :  
**TAXES UNDER ARTICLE 22 OF THE TAX** :  
**LAW FOR THE YEAR 1962** :  
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Rita M. Roche, 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 1962, and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, at 80 Centre Street, New York, New York, on November 14, 1967 at which hearing the taxpayer appeared by counsel, Gabriel T. Pap, Esq., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That in 1962 the taxpayer was a resident of the State of New Jersey and employed in New York by Standard Oil Company of New Jersey; that for 1962 the taxpayer filed a personal income tax nonresident return reporting total New York income of \$8,739.20; that on her return the taxpayer claimed a refund of \$97.40 as overpayment of income taxes withheld.

(2) That by income tax refund voucher dated August 29, 1963 (File No. 2-7113180) the Income Tax Bureau computed the taxpayer's 1962 total New York income at \$9,110.20 by disallowance of the deduction therefrom in the sum of \$371.00 claimed as transportation expenses; that the Income Tax Bureau, accordingly, computed a net overpayment of income taxes withheld of \$76.94.



(3) That the sum of \$371.00 deducted by the taxpayer in computing her 1962 total New York income and claimed as transportation expense was her cost of traveling between her home and her regular place of employment.

(4) That the taxpayer filed a timely claim for refund on September 10, 1963; that taxpayer's claim was denied on December 7, 1964; that taxpayer filed a timely petition for redetermination or refund on February 5, 1965.

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

**DECIDES:**

(A) That transportation expense incurred by the taxpayer in the sum of \$371.00 in 1962 was commutation expense; that the deduction taken by the taxpayer from her total New York income for such transportation expense was not allowable under section 632 or section 633 of the Tax Law, and was properly disallowed; that taxpayer's total New York income for 1962 was \$9,110.20.

(B) That, accordingly, the taxpayer's overpayment of income taxes withheld for 1962 was properly computed at \$78.94, and that taxpayer's petition for refund in excess thereof be and the same is hereby denied.

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

**STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**CHAIRMAN**

/s/ A. BRUCE MANLEY  
**COMMISSIONER**

/s/ SAMUEL E. LEPLER  
**COMMISSIONER**