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Income Tax Determin. A-Z
BUREAU OF LAW
MEMORANDUM

Wolf, Max and Rose

TO: **Commissioners Murphy, Manley & Lopley**

FROM: **Sol Sies, Hearing Officer**

SUBJECT: **Max and Rose Wolf
Application for Revision or Refund
of Personal Income Taxes under
Article 22 of the Tax Law for the
Year 1961.**

A hearing with reference to the above matter was held at the New York City office on November 7, 1966. Taxpayers did not appear but were represented by their accountant.

The issue involves a disallowance of a portion of business deductions in the amount of \$6,000 upon the ground that the same were not shown to be ordinary and necessary in connection with the income earned.

The taxpayers reside in Buffalo, New York. Taxpayer Max Wolf is employed as an outside salesman for Bulova Watch Company of New York City on a straight commission basis soliciting retail jewelry stores covering northwestern New York, including Buffalo and Pittsfield, Lancaster and Stroudsburg in Pennsylvania. The said taxpayer was not reimbursed for any of his expenses.

The taxpayer Max Wolf reported gross commissions from his employer in the amount of \$26,212.03 and claimed business expenses in the amount of \$16,674.30. On their New York State combined income tax return for 1961 the taxpayers claimed a refund of \$1,234.68. On October 10, 1962 the Income Tax Bureau issued a voucher for income tax refund (Form IT 111.25) disallowing \$6,000 of the deductions claimed for travel and entertainment expense as "being in excess of what may be considered as ordinary and necessary." The recomputed tax liability of the taxpayers granted a refund in the amount of \$764.91 and disallowed a further refund as to the balance claimed. The representative for the taxpayers submitted at the preliminary hearing a copy of U. S. Treasury Department Internal Revenue Service letter of 'No Change'.

The representative for the taxpayer submitted evidence to the effect that the Internal Revenue Service conducted an

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audit of the business expenses claimed; that taxpayers were required to submit complete and detailed records with respect to the expenses claimed; that said audit was conducted at the Internal Revenue Service office in Buffalo and completed on June 14, 1964; that on the basis of the records submitted, the Internal Revenue Service accepted the return as filed without change; that the Federal audit was completed on June 14, 1964.

I am of the opinion that the Income Tax Bureau was not aware of the fact that a complete audit had been made by the Internal Revenue Service; that the expenses claimed should have been allowed.

For the reasons stated above I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

May 20, 1968

SOLOMON SIES
Hearing Officer

*Approved
3 copies
returned
6/25/68*

**STATE OF NEW YORK
STATE TAX COMMISSION**

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In the Matter of the Application

of

MAX and ROSE WOLF

**For Revision or Refund of Personal In-
come taxes under Article 22 of the Tax
Law for the Year 1961.**

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The above-named taxpayers 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 in connection therewith at the office of the State Tax Commission at 66 Centre Street, New York, N. Y. on the 7th day of November, 1966 before Solomon Sico, Hearing Officer of the Department of Taxation & Finance at which hearing the taxpayers were represented by Draper and Fenton, CPA's, by Leonard Spitalnik, CPA, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers Max and Rose Wolf filed a joint Federal income tax return for the year 1961 in which the taxpayer Max Wolf reported wages received from Bulova Watch Company, Inc. totaling \$36,212.05 less outside salesman's expenses in the amount of \$16,676.30; that the taxpayers filed a New York combined resident income tax return for the year 1961, and, similarly, reported their income thereon; that the taxpayers, on their New York State income tax return for the year 1964, claimed a refund of \$1,234.68; that on October 10, 1962 the Department of Taxation & Finance mailed to the taxpayers a voucher for income tax refund (Form NY 111.25)

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recomputing their tax liability for the year 1961 and disallowing \$6,000 of the deductions claimed for travel and entertainment expenses as being in excess of what may be considered ordinary and necessary and refunded to the taxpayers the amount of \$764.91, but denied the refund as to the balance claimed; that the taxpayers filed an application for refund requesting a further refund in the amount of \$469.77.

(2) That during the year 1961 the taxpayer Max Wolf was employed by Bulova Watch Company, Inc. of New York City as an outside salesman on a straight commission basis soliciting retail jewelry stores covering northeastern New York and parts of Pennsylvania including Buffalo and Pittsfield, Lancaster and Stroudsburg; that the aforementioned taxpayer was not reimbursed for any of his expenses.

(3) That the taxpayers' representative presented records and data showing the following expenses of the taxpayer Max Wolf:

Hotel Bills-includes phone, restaurant, laundry, valet services	\$1,409.37
Meals (including a carrier, 21 weeks at \$80 weekly)	2,271.05
Porters, tips	717.00
Carrier - Bernard Wolf (son)	1,050.00
Transportation	422.50
Auto expense	5,121.20
Entertainment	2,052.10
Gifts	926.17
Telephone	1,152.00
Stationery, postage	222.22
	<u>\$18,674.50</u>

(4) That the representative for the taxpayers submitted evidence to the effect that the Internal Revenue Service conducted an audit of the expenses of the taxpayer Max Wolf for the year 1961; that the taxpayers were required to submit detailed and complete records as to the business expenses claimed and deducted on their Federal return; that on the

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basis of the records submitted, the Internal Revenue Service accepted the return of the taxpayers for the year 1961 as filed without any change; that the audit by the Internal Revenue Service was completed on June 14, 1964.

Based upon the foregoing findings and all of the evidence submitted herein,

The State Tax Commission hereby

DETERMINES:

(A) That the business deductions claimed by the taxpayer Max Wolf for travel and entertainment constituted ordinary and necessary expenses in connection with his sales activities and that the aforementioned taxpayer was entitled to the deduction claimed for said business expenses.

(B) That, accordingly, the recomputation of tax liability of the taxpayers disallowing expenses amounting to \$6,000 is incorrect; that the taxpayers' application for further refund is hereby granted; that there be refunded to the taxpayers the amount of \$469.77 together with any interest that may be lawfully due thereon.

Dated: Albany, New York the 25 day of June , 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

A. BRUCE MANLEY

Commissioner

/s/

SAMUEL E. LEPLER

Commissioner