

STATE OF NEW YORK
STATE TAX COMMISSION

Auth. 22723

In the Matter of the Petition

of

MICHAEL & AUGUSTA CALANDRILLO :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 22 & 23 of the Business
Tax Law for the (Year(s) 1962 :

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney M.
Freed, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney M. Freed, Esq.
11 Park Place
New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of December , 1971.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL AND AUGUSTA CALANDRILLO

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1962

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Michael and Augusta Calandrillo (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Michael and Augusta Calandrillo
691 Lorimer Street
Brooklyn, N.Y.
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of December, 1971.

James D. Frawley

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL AND AUGUSTA CALANDRILLO : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law and of Unincor- :
porated Business Taxes under Article 23 of :
the Tax Law for the Year 1962. :

Michael and Augusta Calandrillo filed a petition for the redetermination of deficiencies dated May 10, 1965, in personal income taxes imposed under Article 22 of the Tax Law and of unincorporated business taxes imposed under Article 23 of the Tax Law. A hearing was held on October 22, 1970, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, with Sidney M. Fried, Esq. appearing for the petitioner and Edward H. Best, Esq. (Francis X. Boylan, Esq. of Counsel) appearing for the Income Tax Bureau. The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper apportionment of certain deductions between taxpayer's home and his business for purposes of the unincorporated business tax. The deficiency in personal income tax was based solely upon the disallowance of an item of \$209.64 and was not contested. At the hearing, the Income Tax Bureau asserted under section 689(c)(1) of the Tax Law, and petitioner did not contest, that any deductions disallowed on the unincorporated business tax returns be also disallowed on the personal income tax return to increase the deficiency in personal income tax.

FINDINGS OF FACT

1. Petitioner, Michael Calandrillo, is a funeral director. Petitioner's business is conducted in parts of his house and garage and in two buildings located on either side of his house and garage. The floor area and volume of space devoted to the business

was each 7/8 of the totals for the whole.

2. Petitioner has proven through his testimony, that the following expenses were wholly allocable to his business: Electrical expense, \$554.08; water taxes, \$130.00; depreciation on property in the total amount of \$1,255.00.

3. The telephone expense is allowed to the extent of 90% of the total claimed of \$844.30 for a net amount of \$759.94. The amount disallowed of \$84.44 is also disallowed as to personal income tax.

4. Real estate taxes are allowed to the extent of 7/8 of the total of \$1,377.60 for a net amount of \$1,205.40.

5. Fuel oil expense is allowed in the amount of 5/6 of the claimed amount of \$618.66 for a net amount of \$515.44. The fuel was used to heat the home and only one of the side buildings. The ratio of area and volume devoted to the business was 5/6 of the whole.

6. The petitioner did not contest the disallowance of an item of \$209.64.

7. The deficiencies stated on May 10, 1965, amount to \$18.87 for personal income tax and \$198.57 for unincorporated business tax with interest on both to the date of the deficiency of \$26.98.

CONCLUSIONS OF LAW

A. The deficiency disallowing deductions in the amount of \$4,989.36 is erroneous in disallowing \$4,419.86 in deductions from unincorporated business tax to which petitioner is entitled. It is correct to the extent of only \$569.50.

B. The deficiency in personal income tax is erroneous in adding to income only the uncontested item of \$209.64. The amount of \$84.44 for telephone expense, \$103.22 for fuel expense and \$172.20 for real estate taxes which were deducted in arriving at Federal and New York adjusted gross income should be added back to income to arrive at a net disallowance of \$569.50

DECISION

The petition is granted. The deficiency in unincorporated business tax is recomputed to be \$36.46, and the deficiency in personal income tax is increased to \$51.26.

Both deficiencies may bear interest to the extent required by section 684 of the Tax Law.

The petition is granted. The deficiency in unincorporated business tax is redetermined to be \$36.46 plus interest of \$4.52 to May 10, 1965, and the deficiency in personal income tax is redetermined to be \$51.26 plus interest of \$6.36 to May 10, 1965, each with such additional interest as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York
December 23, 1971.

STATE TAX COMMISSION

Norman Sullivan
COMMISSIONER

Bruce Masley
COMMISSIONER

Milton Koerner
COMMISSIONER