

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BENJAMIN J. & AGNES R. FITZGERALD
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965

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

State of New York
County of Albany

Linda Wilson, 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 29th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon BENJAMIN J. & AGNES R. FITZGERALD (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Benjamin J. & Agnes R. Fitzgerald
436 76th Street
Brooklyn, New York 11209
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

29th day of December, 1971.

Martin J. Suddes

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BENJAMIN J. & AGNES R. FITZGERALD : DECISION
for a Redetermination of Deficiencies :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for the :
year 1965 and 1966. :

Benjamin J. and Agnes R. Fitzgerald filed petitions for the redetermination of deficiencies dated June 26, 1967, and November 25, 1968, in personal income tax for the years 1965 and 1966 imposed under Article 22 of the Tax Law. A hearing was duly held before Nigel G. Wright, Hearing Officer, on October 19, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, with the petitioner appearing without a representative and the Income Tax Bureau appearing by Edward H. Best (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case is the degree of proof required for the allowance of deductions for contributions and for expenses related to employment.

FINDINGS OF FACT

1. Mr. Fitzgerald is an employee of the Federal Government working in an investigative capacity. His duties include much field work on evenings and weekends. His wife works as a part-time bank clerk. Petitioner claimed as deductions: contributions to churches of \$1,235.00 in 1965 and \$1,100.00 in 1966, telephone

necessary for his job of \$75.00 in each year, other expenses related to the job of \$150.00 each year and a bad debt of \$60.00 in 1966. Their annual income approximated \$16,000.00.

2. The bad debt of \$60.00 was incurred on a claim against a vendor who went bankrupt during 1966.

3. The telephone expense was about half of petitioner's total telephone expense and was incurred at the request of a superior. The other expenses were: \$100.00 for entertaining an informant, \$100.00 for specialized magazines, \$50.00 for magazines with general circulation not specifically related to his job. Petitioner made no effort to seek reimbursement from his employer.

4. Petitioner would go to church near his place of work in downtown Manhattan at St. Andrew's Church and St. Peter's Church. He claims contributions at St. Andrew's of \$180.00 in 1965 and \$150.00 in 1966. He claims contributions at St. Peter's of \$100.00 in 1965 and \$100.00 in 1966.

5. Petitioner and his family went to St. Ephraim's Church on 75th Street in Brooklyn in 1965. A letter from the curate of that church substantiates contributions in the amount of \$450.00 in 1965. In both years, he and his family attended Our Lady of Angels Church and they claim contributions of \$250.00 for 1965 and \$350.00 for 1966.

6. Petitioner testified that his wife and two children attend Our Lady of Perpetual Help Church with some regularity. They claim \$175.00 for 1965 and \$250.00 for 1966.

7. Petitioner claims gifts of clothing to St. Vincent de Paul and Catholic charities of \$80.00 for 1965 and \$100.00 for 1966.

8. Petitioner claims donations in 1966 of \$75.00 to a parochial high school which his younger daughter attended and \$75.00

to St. Joseph's College which his older daughter attended.

CONCLUSIONS OF LAW

- A. The bad debt of \$60.00 in 1966 is allowed.
- B. The expenses related to work are not allowed as petitioner has not shown that his employer would not have reimbursed these expenses if a claim had been made.
- C. The contributions to St. Andrew's and St. Peter's are allowed in the total amounts of \$280.00 for 1965 and \$250.00 in 1966. The contributions of \$450.00 to St. Ephraim's in 1965 is allowed. Contributions to other churches will be allowed only to the extent of \$450.00 for 1966. The absence of testimony from petitioner's wife and children impair the claim for the remainder of the extraordinary amounts involved.
- D. The gifts to the schools and the gifts of clothing are similarly disallowed for lack of any attempt to produce corroborating evidence.

DECISION

The petitions are granted and the deficiencies are recomputed to be \$52.25 for 1965 and \$59.40 for 1966 each with such interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
December 29, 1971.

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bessie Manley

COMMISSIONER

Milton Koern

COMMISSIONER