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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GIARRACCO

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

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

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 30th day of October , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph Giarracco

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Joseph Giarracco

157 Charles Street
East Williston, New York 11596

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

30th day of October , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GIARRACO

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

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

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 30th day of October, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Martin J. Goldberg, P.A.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Martin J. Goldberg, P.A.

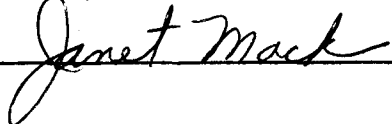
72 South Grove Street
Freeport, New York 11520

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

30th day of October, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

October 30, 1974

Mr. Joseph Giarracco
157 Charles Street
East Williston, New York 11596

Dear Mr. Giarracco:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH GIARRACCO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

Petitioner, Joseph Giarracco, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965. (File No. 38545488). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on July 15, 1974, at 3:00 P.M. Petitioner appeared by Martin J. Goldberg. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Did petitioner, Joseph Giarracco, substantiate \$4,980.92 in nonreimbursed travel and business expenses for the year 1965?

FINDINGS OF FACT

1. Petitioner, Joseph Giarracco, and his wife filed a New York State combined income tax return for the year 1965. He claimed a deduction of \$4,980.92 on said return for nonreimbursed business expenses. This deduction was based upon alleged business expenses of \$8,326.58 minus employer reimbursement of \$3,345.66.

2. On May 20, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Giarracco, disallowing \$4,980.92 in nonreimbursed business expenses for the year 1965 for lack of proper substantiation. It also disallowed \$545.00 in contributions, which disallowance is not being contested by petitioner. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$552.59 plus interest in the sum of \$69.53 or a total sum of \$622.12.

3. Petitioner, Joseph Giarracco, was employed by B. Altman & Co. as a china buyer during the year 1965. His office was located in his employer's store located in New York City.

4. Petitioner, Joseph Giarracco's reasonable and necessary expenses incurred in the course of his employment during the year

1965 in connection with his foreign travel and attendance at a convention on behalf of his employer were:

a) Hotel, food, tips, laundry, telephone local fares	\$2,461.25
b) Travel-fares	820.53
c) Car hire	747.18
d) Entertainment	401.68
e) Miscellaneous, samples	<u>38.52</u>
TOTAL	\$4,469.16

He received reimbursement from his employer in the total sum of \$3,345.66 leaving a balance of unreimbursed business expenses in the sum of \$1,123.50.

5. Petitioner, Joseph Giarracco's reasonable and necessary unreimbursed business expenses incurred in the course of his employment during the year 1965 for magazines used for business totaled the sum of \$23.38, for an employee incentive program totaled the sum of \$275.25, for entertainment of manufacturer's representatives totaled the sum of \$851.40 and for telephone calls totaled the sum of \$112.35.

6. During the year 1965 petitioner, Joseph Giarracco, traveled on frequent occasions to his employer's branch stores located in Manhasset, Long Island, New York, White Plains, New York, Short Hills, New Jersey and St. David, Pennsylvania. All of these branch stores were located within commuting distance of his home in East Williston, New York. He claimed a deduction in the sum

of \$1,264.00 for said unreimbursed local travel on his income tax return. He failed to submit any documentary or other substantial evidence to prove which, if any, of said trips originated from his office in New York City and which originated from his home.

7. Petitioner, Joseph Giarracco, failed to submit any documentary or other substantial evidence to prove that he expended during the year 1965 the sum of \$475.00 for Christmas gifts, cards and gratuities.

CONCLUSIONS OF LAW


A. That petitioner, Joseph Giarracco, substantiated unreimbursed business expenses incurred in the course of his employment by B. Altman & Co. during the year 1965 in the total sum of \$2,595.04. He failed to submit documentary or other sufficient evidence to support his claim for any deductions in excess of said sum. He furthermore failed to submit documentary or other sufficient evidence to prove that his local travel did not constitute commutation expense, which is not deductible under section 162 of the Internal Revenue Code.

B. That the petition of Joseph Giarracco is granted to the extent of reducing disallowed travel and business expenses for the year 1965 from \$4,980.92 to \$2,595.04 and of reducing additional personal income tax due from \$552.59 to \$314.00 together with such

interest as may be lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 20, 1968 and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER