

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

Income Tax Determinations
BUREAU OF LAWStrickland,
MEMORANDUM

A-2

Gilbert E. Jr.
Margaret

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: GILBERT E. JR. AND MARGARET STRICKLAND

Petition for a redetermination of a deficiency or for 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 before me at 80 Centre Street, New York, New York on June 19, 1967. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved in this matter is whether the taxpayer's allocation of his income was properly disallowed.

The taxpayer filed a nonresident tax return for the year 1961, and claimed an allocation of salary income of \$55,109.88 on the basis that he worked 80 days outside New York State, and that he worked 241 days during the year earning such salary.

A notice of deficiency and statement of audit changes were issued on March 15, 1965, determining additional income tax and interest due in the amount of \$2,092.51 on the basis that the taxpayer failed to submit information requested, and his allocation of income earned within and without New York State was disallowed as unsubstantiated.

In 1961, the taxpayer worked for Diamantes Americanas, Inc., Glens Associates, Inc., P. A. Dana, Inc., and Roscoe International Corporation as an executive. All of these companies are affiliated and maintained their office at the same address in New York City.

The taxpayer's normal work week was five days. Of the 80 days which the taxpayer claimed to have worked without the State, 26 days were Saturdays during which he worked at his New Jersey home. His work at home on these Saturdays dealt with confidential correspondence and other matters. This work could have been done by the taxpayer at the New York office of his employers, but the taxpayer arranged to do this work at home for his convenience.

The taxpayer submitted expense receipts which showed that he worked 15 days without the State during the year. The taxpayer did

not produce sufficient documentary or other evidence to show that he was without the State or that he worked on behalf of his employers on the 39 other days for which he claimed allocation of income, which he claimed to have done in support of the allocation of his salary. The taxpayer's workdays totaled 215 during the year of which days 200 were New York workdays.

It is my opinion that the income of the taxpayer derived from work performed at his home on Saturdays for his greater convenience constitutes income from sources within the State in accordance with the cases of Burke v. Brasalini, 10 A D 2d 694 and Murphy v. Murphy, 10 A D 2d 764. Saturdays, on which the taxpayer claimed to have worked at home, were not workdays. The taxpayer is entitled to an allocation of his salary on the basis that he only worked 15 days without the State during the year since he did not produce satisfactory evidence that he worked more days than that outside of New York.

For the reasons stated above, I recommend that the decision of the State Tax Commission affirming the deficiency, except to the extent of cancelling the portion of the deficiency as a result of allowing an allocation of salary for 15 days worked without the State, be substantially in the form submitted herewith. The proposed determination reduces the tax and interest from \$2,092.51 to \$1,661.05.

Hearing Officer

FVD:rlp
Enc.
May 20, 1968

*Revised by
3 Comms.
returned 6/25/68*

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

GILBERT E. JR. & MARGARET STRICKLAND

**FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEAR 1961**

The taxpayers 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 1961 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on June 19, 1967 before Francis V. Bow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a joint nonresident income tax return for the year 1961 in which they reported income from New York sources of \$39,976.68; that the taxpayer, Gilbert E. Strickland, Jr., claimed an allocation of his salary income of \$55,109.88 on the basis that he worked 241 days during the year of which workdays he was required to work 80 days outside of New York State.

(2) That a notice of deficiency and statement of audit changes were issued on March 15, 1965 (File No. 1-6092793) finding additional income tax and interest due in the sum of \$2,092.51 on

the basis that the taxpayer, Gilbert E. Strickland, Jr., failed to submit information requested and his allocation of income earned within and without New York State was disallowed as unsubstantiated.

(3) That the taxpayer, Gilbert E. Strickland, Jr., is an executive; that he resides in Tenafly, New Jersey; that he was employed by Diamantes Americanas, Inc., Gless Associates, Inc., P. A. Dana, Inc., and Hesseco International Corporation, which companies are affiliated and had their only office at the same address in New York City.

(4) That the 80 days which the taxpayer claimed to have worked outside of New York State in behalf of his employers included 26 days during which the taxpayer worked at home on Saturdays; that the taxpayer's regular work week was five days; that the taxpayer was not required by the terms of his contract of employment to work at home; that the New York office of the taxpayer's employers was available for the taxpayer's use on Saturdays; that the work of the taxpayer at home on Saturdays dealt with confidential correspondence and other matters in his employer's businesses; that the taxpayer arranged to work at home instead of his employers' New York office for his greater convenience.

(5) That the taxpayer claimed to have worked on the remaining 54 days outside the State of New York at places other than his home; that he submitted expense receipts to show that he worked without the State 15 days during the year; that the days worked outside of the State were January 11, February 5 and 6, March 2 and 3, April 18 and 19, May 21 and 22, September 19 and 20,

October 3 and 4 and November 15 and 16; that the work of the taxpayer on these 15 days consisted of contract negotiations and conferences with U. S. government agencies in Washington, D. C. and conferences in Pennsylvania and New Jersey.

(6) That the taxpayer claimed that he worked on the remaining 39 days without the State in behalf of his employers at locations other than his New Jersey home; that the taxpayer either failed to produce sufficient documentary or other evidence to establish that he was without the State on such days or failed to establish that he was working for his employer on all of such days.

(7) That the taxpayer worked 215 days during the year for employers having an office in New York State, of which days 200 were worked in New York State.

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

DECIDES:

(A) That there was no necessary ingredient required by the contract of employment, by the nature of the services performed and the formulation of judgment which necessitated the New Jersey home of the taxpayer, Gilbert E. Strickland, Jr., as a locus for the performance of the taxpayer's services; that such services could have been performed at the New York office of his employers.

(B) That the State Tax Commission properly disallowed any allocation of income outside of the State for services performed by the taxpayer at his New Jersey home on Saturdays during the year 1961; that the taxpayer is entitled to an allocation of income

for services performed outside the State on 15 days since he substantiated that he worked without the State on behalf of his employers, 15 workdays during 1961.

(C) That the taxpayer's salaries are allocated as follows:

		<u>Salary</u>		<u>Salary Earned in New York State</u>	
New York workdays	200	X	\$55,109.88	=	\$51,265.00
Total workdays	215				

(D) That the taxpayer's New York income tax is re-computed as follows:

Salary earned within New York State		\$51,265.00
Other New York income		1,361.95
Corrected New York income		<u>\$52,626.95</u>
Less itemized deductions adjusted		
	\$52,626.95 X 83,506.16	<u>2,227.97</u>
	\$56,126.27	
Balance		\$52,900.98
Less exemptions		4,200.00
Corrected New York taxable income		<u>\$48,700.98</u>
Total New York tax	\$4,190.06	
Less statutory credit	23.00	
Tax due	<u>\$4,167.06</u>	
Tax previously stated	<u>2,751.40</u>	
Additional Personal Income tax due	1,413.66	
Interest computed to March 15, 1965	<u>247.39</u>	
Tax and interest	<u>\$1,661.05</u>	

(E) That the notice of deficiency and statement of audit changes (File No. 1-6092793) are modified by cancelling the additional income tax and interest due for the year 1961 to the extent of \$431.46; that the taxpayer's 1961 income tax and interest computed to March 16, 1965, the date of the notice of deficiency in the modified amount of \$1,661.05, is correct and lawfully due

and owing together with interest and other charges and does not include any tax or other charges which could not be lawfully demanded; that the taxpayer's petition for a redetermination of a deficiency or for refund of personal income taxes as modified be and the same is hereby denied.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

/s/

SAMUEL E. LEPLER

COMMISSIONER