

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
JULIAN AND LYDIA GUMPERZ  
For a Redetermination of a Deficiency  
or for Refund of Personal Income Taxes :  
Under Article 22 of the Tax Law for  
the Years 1962 and 1963 :

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In the Matter of the Petition  
of  
JULIAN GUMPERZ  
For a Redetermination of a Deficiency  
or for Refund of Unincorporated Business :  
Taxes Under Article 23 of the Tax Law  
for the Years 1962 and 1963 :

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The taxpayers having filed petitions pursuant to Sections 689 of the Tax Law for a redetermination of a notice of deficiency dated April 11, 1966, of personal income tax imposed by Article 22 of the Tax Law and of a further notice of deficiency, also dated April 11, 1966, of unincorporated business taxes imposed by Article 23 of the Tax Law, both for 1962 and 1963, and a hearing thereon having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issues are whether the taxpayers, husband and wife, are statutory residents of New York by reason of being present in the State for over 183 days and whether the husband, who is doing business in New York, is doing business outside of New York so as to be entitled to an allocation of business income to non-New York sources.

HEARING UNIT - File Copy

TAX Per. Inc. & UBT

ART. 22 & 23 SECT. 689

FILE NO. \_\_\_\_\_

CROSS REF. \_\_\_\_\_

CASE LAW CITATIONS \_\_\_\_\_

DECISION \_\_\_\_\_

REMARKS \_\_\_\_\_

2. The asserted deficiencies are for personal income tax against both husband and wife in the amounts of \$1557.60 for 1962 and \$2674.41 for 1963, both with interest, and for unincorporated business tax against the husband alone in the amounts of \$1497.56 for 1962 and \$1876.03 for 1963, both with interest.

3. Julian and Lydia Gumperz are husband and wife and are domiciled in Gaylordsville, New Milford, Connecticut.

4. Doctor Gumperz held a three-year lease to a one-bedroom apartment located at 440 East 62nd Street, New York City.

5. Doctor Gumperz is an economic and financial advisor and maintains business office at 630 Third Avenue, New York City. He employs 15 to 20 persons there.

6. Doctor Gumperz spent nights at his New York apartment when he did not want to commute back to Connecticut from his business in New York. His wife was at the apartment occasionally, for at least social reasons.

7. Lydia Gumperz spent at least three or four days a month at the New York apartment.

8. Doctor Gumperz did not maintain records of his presence in New York State, his presence at his business office nor his presence at his New York apartment for the years in question.

9. The computation offered by taxpayer of the time the taxpayers spend in New York in the taxable years in question depends not only on the veracity of Doctor Gumperz's testimony and upon his memory, but depends also on probabilities which make any result speculative.

10. No evidence has been submitted to show what portion of the asserted deficiency, if any portion, relates to the income of Lydia Gumperz.

11. The tax returns filed by the taxpayer's business show losses of \$31,765.04 for 1962 and \$22,979.33 for 1963 brought about primarily by research fees of \$97,246.77 for 1962 and \$75,010.00 for 1963. Taxpayer claims to have earned \$66,440.00 in gross fees each year at his Gaylordsville address. Taxpayers' personal income tax returns show total business income as reported to the Federal authorities of \$33,600.90 for 1962 and \$39,484.20 for 1963 with losses being attributable to New York of \$31,765.04 for 1962 and \$22,979.33 for 1963.

12. Doctor Gumperz had clients in Connecticut, Colorado, and Florida and visited them occasionally. He claims to have serviced them entirely from Gaylordsville, Connecticut and not from his New York office. He had a library and research facilities at Gaylordsville. When working at Gaylordsville, he would frequently phone his New York office for research and statistical information.

13. Doctor Gumperz does not have a business card nor any professional listing and does not advertise. He uses two letter-heads, both with his name but one with the New York address and one with the Gaylordsville address. The one with the Connecticut address does not identify the nature of his business or profession nor even whether he has a business or profession. His telephone listing in Connecticut is not a business listing.

14. No evidence has been submitted to show that the taxpayer maintained separate accounts for his New York business income, and no information has been submitted as to the values of taxpayers' property and payroll in New York and Connecticut nor of his receipts in New York.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission

DECIDES:

A. Julian and Lydia Gumperz are statutory residents of New York State for the taxable years in question. There is no corroboration as required by Regulation 20 NYCRR 102.2 (c) of the whereabouts of either during the taxable years in question, and there is no identification of the separate income of either.

B. Julian Gumperz maintained no office or place of business outside of New York State during the taxable years in question and further, has not sustained the burden of proving any allocation of income which would be otherwise allowable.

C. The deficiencies as set forth in paragraph two hereof are affirmed.

Dated: Albany, New York, this 22nd day of April , 1970.

STATE TAX COMMISSION

Norman Gellman  
PRESIDENT

Bruce Mandel  
COMMISSIONER

Milton Korman  
COMMISSIONER