

STATE OF NEW YORK
STATE TAX COMMISSION

Zittau, Marianne
Art. 22 - Plus Income
(1971)

In the Matter of the Petition

of

Marianne Zittau

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) 1963

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

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 26th day of February , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Frank P. Grad & Arthur M. Schneck (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frank P. Grad & Arthur M. Schneck
60 East 42nd Street
New York, New York 10017
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

26th day of February , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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AFFIDAVIT OF MAILING
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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 26th day of February , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Marianne Zittau (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Marianne Zittau
501 East 79th Street
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

26th day of February , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARIANNE ZITTAU	:	
	:	DECISION
For a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
year 1963.	:	
	:	

The taxpayer petitioned for a redetermination of a deficiency or for refund of Personal Income Taxes under Article 22 of the Tax Law for the year 1963. A formal hearing was held before Alfred Rubenstein, Hearing Officer, in the offices of the State Tax Commission in the City of New York on June 26, 1967. The taxpayer was represented by Sidney Weinman, Esq.

FINDINGS OF FACT

1. The issues in this case are (1) whether payments made to the taxpayer by employers of the taxpayer's late husband during 1963 were a gift or represented deferred compensation and (2) whether the taxpayer was a resident of the State of New York during the period January 9, 1963 to October 3, 1963.
2. Taxpayer and her husband had immigrated from Europe in 1942, became U.S. Citizens and residents of the State of New York.
3. For approximately six years, up to his death in October, 1962, the taxpayer's husband was senior vice-president and treasurer of United Artists Associates, Inc. and received a salary of approximately \$50,000.00 per year.
4. On December 4, 1962 the following resolution was adopted at a meeting of the board of directors of United Artists:

"RESOLVED, that in recognition of the respect, love and esteem for Henry J. Zittau, its late senior vice president, and in recognition of his faithful service during his long association with the corporation, this Board of Directors, having ascertained that a financial need for such provision exists, hereby gives and grants to Marianne Zittau, widow of Henry J. Zittau, the sum of \$40,000, to be paid to Marianne Zittau (or to her estate, if she should not survive to the time of the last installment) in the following manner and not otherwise: the sum of \$4,000 on January 15, 1963 and the remaining sum of \$36,000 in monthly installments of \$1,000 each, commencing in January, 1963, and terminating in December, 1965."

The taxpayer rendered no services to the corporation, either before or after the above resolution. Taxpayer's husband had been fully paid by the Corporation for all services rendered by him during the course of his employment.

5. For eleven years up to the time of her husband's death, the taxpayer and her husband resided at 27 West 96th Street, New York City. On January 9, 1963 the taxpayer gave up her apartment and left New York for Vienna, Austria, where she stayed at her cousin's apartment. On March 20, 1963 she left Austria for Spain where she stayed for a period of four weeks and then returned to her cousin's apartment in Vienna. On October 3, 1963 the taxpayer returned to the United States. During this period of time the taxpayer never requested restoration of her Austrian citizenship, nor did she renounce her U. S. citizenship. Taxpayer was not employed while in Vienna nor did she have her belongings shipped from the United States to Austria. Shortly after her return to the United States the taxpayer purchased a cooperative apartment located at 501 East 79th Street, New York City.

6. An audit by the Income Tax Bureau of taxpayer's 1963 resident tax return resulted in a determination that: (1) the taxpayer

was a resident of New York for the entire year of 1963 and (2) the sums received by the taxpayer from United Artists were paid in recognition of past services of the taxpayer's late husband. Accordingly, a notice of determination for a deficiency was issued on January 18, 1965, file #3-8474230, in the amount of \$1,387.60 plus interest.

DECISION

A. The sum of \$16,000 received by the taxpayer from United Artists during 1963 was paid in recognition of the past services of taxpayer's late husband.

B. The taxpayer was a resident of the State of New York in 1963.

C. The petition is denied, and the notice of deficiency for 1963 is approved together with such interest as may be lawfully due under the Tax Law.

DATED: Albany, New York
February 26, 1971

STATE TAX COMMISSION

Norman Galloran

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koerner

COMMISSIONER