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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM & MARGARET GIBSON

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 & 1966

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 31st day of July , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon William & Margaret Gibson (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William & Margaret Gibson
1 le Glen Road
Stockbridge, Massachusetts

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

31st day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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WILLIAM & MARGARET GIBSON

For a Redetermination of a Deficiency or
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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 31st day of July , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Irwin Wolf, C.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: Irwin Wolf, C.P.A.
Cogan, Bell & Company
350 Fifth Avenue
New York, New York 10001
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

31st day of July , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 31, 1972

William & Margaret Gibson
1 le Glen Road
Stockbridge, Massachusetts

Dear Mr. & Mrs. Gibson:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

WILLIAM & MARGARET GIBSON : DECISION

for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1965 and 1966.

William and Margaret Gibson filed a petition for the redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the years 1965 and 1966. A hearing was held on June 21, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. Irwin Wolf, C.P.A., of Cogan, Bell & Company appeared for petitioners. Edward H. Best, Esq., (Francis X. Boylan, of Counsel) appeared for the Income Tax Bureau. The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper allocation to New York of salary income received by nonresidents of New York.

FINDINGS OF FACT

1. Petitioners are residents of Stockbridge, Massachusetts.
2. On their 1965 return petitioners reported \$905.00 which was allocated entirely to New York, and business income of \$17,184.00 of which \$9,960.00 was allocated to New York under an allocation fraction of 142/245. Other income was reported. No wages were shown on the return. Withholding information returns showed that

\$23,500.00 was received by Mr. Gibson and \$4,000.00 was received by Mrs. Gibson, both from Tamarack Productions Ltd.

3. The 1966 return shows no wages but again shows \$8,110.00 of business income of which \$3,741.00 was allocated to New York under a fraction of 113/245. Withholding information returns showed \$10,600.00 received by Mr. Gibson and \$2,000.00 received by Mrs. Gibson, both from Tamarack Productions Ltd.

4. The deficiency is calculated on the basis that the total salaries from Tamarack Productions Ltd. and the additional \$905.00 received in 1965 constitute New York income.

5. The petitioners did not appear or testify at the hearing.

6. The representative who appeared at the hearing claimed as follows: the allocation ratios shown on the returns were incorrect and the Gibsons worked entirely outside of New York at a house used as a studio and owned by the corporation; the only asset of the corporation in New York was the ownership of a telephone answering service which was operated under contract by an outside firm; the corporation owns the rights to the Gibsons' literary productions; the corporation has only a statutory office in New York and has no office space which could be devoted to the Gibsons' personal literary efforts.

7. The deficiencies are dated March 31, 1969, and are in the amounts of \$113.00 for 1965 and \$267.74 for 1966, together with interest of \$229.19 for a total of \$1,609.93.

CONCLUSIONS OF LAW

A. The petitioners have not carried the burden of proof that the deficiency is erroneous. There are many apparent contradictions in the information before the Commission which have not been resolved and which cannot be resolved except by the personal testimony of the

petitioner. The failure of the petitioners to appear and testify requires a decision affirming the deficiency.

DECISION

The petition is denied and the deficiency is found correct together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

July 31, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Robert Manley

COMMISSIONER

Milton Kvernum

COMMISSIONER