

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ADKINS LOWELL, AND
ELEANOR LOWELL, his wife
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
and 1967.

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

State of New York
County of Albany

Lynn Wilson , 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 March , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon ADKINS LOWELL, AND ELEANOR LOWELL, his wife (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Adkins and Eleanor Lowell
93 Slope Drive
Short Hills, New Jersey
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 March , 19 72

Martha Funnas

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
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ELEANOR LOWELL, his wife
For a Redetermination of a Deficiency or
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AFFIDAVIT OF MAILING
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State of New York
County of Albany

Lynn Wilson, 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 March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon F. ROBERTS BLAIR, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: F. Roberts Blair, Esq.

55 Liberty Street
New York, New York 10005

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 March, 1972.

Martha F. Farnsworth

Lynn Wilson



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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 30, 1972

Adkins and Eleanor Lowell
93 Slope Drive
Short Hills, New Jersey

Dear Sir and Madam:

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

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ADKINS LOWELL, AND :
ELEANOR LOWELL, his wife : 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, 1966 and 1967. :

Adkins Lowell and Eleanor Lowell, his wife, petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1965, 1966 and 1967. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission, in the City of New York on October 19, 1971, and concluded on November 17, 1971. The Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel). The petitioners appeared and were represented by F. Roberts Blair, Esq.

ISSUE

What portion of the nonresident petitioner's income from his personal services in advertising activities is subject to the New York State income tax?

FINDINGS OF FACT

1. The petitioners, Adkins and Eleanor Lowell, filed New York State income tax nonresident returns for the years 1965, 1966 and 1967. The petitioners did not file New York State unincorporated business tax returns for the years 1965, 1966 and 1967.

2. On March 31, 1969, the Income Tax Bureau issued a Notice of Deficiency, under File No. 73224212, for the years 1965, 1966 and 1967, in the amount of \$3,539.86, plus interest. The deficiency was

based on a determination by the Income Tax Bureau that the days which the petitioner worked at home in New Jersey were for his own convenience and should be eliminated from consideration in computing the allocation of income attributable to sources outside New York State for income tax purposes. Days worked other than at home but outside New York State were considered days worked outside New York State. A petition for a redetermination of the deficiency was filed.

3. The petitioner, Adkins Lowell, was an advertising promotion specialist, handling primarily eight periodic publications of the McGraw Hill Company of New York City. The petitioner wrote advertising material, including direct mailings, brochures, special issues, and other promotional material. The McGraw Hill Company was billed for these services by Dobbs Advertising Company, Inc. whose offices are in New York City. Adkins Lowell would negotiate and establish the fee to be paid for each promotion.

4. Dobbs, was the agency of record who represented the McGraw Hill clients. Dobbs' employees performed accounting and billing services and the detailing and mechanical production of the advertising material created and written by Mr. Lowell. Upon payment by McGraw Hill, Dobbs would deduct an amount varying from 20% to 33% of the fees as its agreed share of the receipts, and appropriate amounts for social security and withholding income taxes. A net amount would then be paid monthly to Mr. Lowell. There was never a written agreement concerning their association between Mr. Lowell and Dobbs. In addition, Dobbs paid to Mr. Lowell, a commission for art work business brought into the advertising company. His receipts were reported as "salaries and wages" on the New York State tax returns.

5. The petitioner is listed by the Dobbs Advertising Company, Inc. as a vice president, but was not a stockholder. The petitioner

used business calling cards which list him as "executive vice president" of Dobbs. Dobbs' stationery lists only a New York City address although Lowell lists a separate telephone in their name in New Jersey for which he assumes the cost. A conference room and desk space was available to the petitioner at the New York City location.

6. The New Jersey location at which the petitioner maintains that he performed the major part of his out-of-state work consisted of a separate room in his successive residences in Short Hills, New Jersey. Each room was outfitted with working desk space for creative writing, typewriter, files and telephone. Mr. Lowell was not reimbursed by Dobbs for the expenses of this New Jersey location.

7. Mr. Lowell was advised by his physician that by reason of his physical condition, he should limit his commuting as much as possible. His writing was done in Short Hills, New Jersey, where he could be relatively free of confusion and interruptions.

8. The petitioner, Mr. Adkins Lowell, was an employee of Dobbs Advertising Company, Inc. during the years 1965, 1966 and 1967.

9. The petitioner has failed to prove that work performed at his residence in Short Hills, New Jersey, was performed at that location for other than his own greater convenience.

DECISION

A. The days spent by the petitioner at home in New Jersey, are properly excluded from the computation of days worked outside New York for purposes of allocating income from sources within and without New York State.

B. The Notice of Deficiency is sustained, and the petition for redetermination of the deficiency is denied.

DATED: Albany, New York
March 30, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koenig
COMMISSIONER