

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ESTATE OF ^{of} RICHARD J. McGRATH :
CLAIRE B. McGRATH, Executrix :

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

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) 1964 & 1965 :

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 16th day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon ESTATE OF
RICHARD J. McGRATH CLAIRE B.
McGRATH, EXECUTRIX (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Estate of Richard J. McGrath
Claire B. McGrath, Executrix
1136 South Bayshore Drive
Virginia Beach, Virginia 23451
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

16th day of August , 1972.

Joyce S. Van Patten

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ESTATE OF RICHARD J. McGRATH :
CLAIRE B. McGRATH, EXECUTRIX :
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) 1964 & 1965 :

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 16th day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon WALTER D.

O'HEARN, Jr., Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Walter D. O'Hearn, Jr., Esq.
c/o King and O'Connor
30 Broad Street
New York, New York 10004

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

16th day of August , 1972

James S. Van Patten

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 16, 1972

**Estate of Richard J. McGrath
Claire B. McGrath, Executrix
1136 South Bayshore Drive
Virginia Beach, Virginia 23451**

Dear Mrs. McGrath:

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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THE ESTATE OF RICHARD J. McGRATH	:	
by	:	DECISION
CLAIRE B. McGRATH, Executrix	:	
and	:	
CLAIRE B. McGRATH, Individually	:	
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1964 and 1965.	:	

The Estate of Richard J. McGrath by Claire B. McGrath, executrix and Claire B. McGrath, individually filed a petition for a redetermination of a deficiency issued under date of March 11, 1968, and for refund of payments made for personal income tax under Article 22 of the Tax Law for the years 1964 and 1965.

A hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York City on April 18, 1972, before Nigel G. Wright, Hearing Officer. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether certain compensation received during the years in question was for current services performed outside of the State and nontaxable or whether they were for past services which had been performed in the State and taxable at least in part.

FINDINGS OF FACT

1. Richard J. McGrath and Claire B. McGrath were domiciliaries and residents of the State of Virginia. Richard J. McGrath died on October 23, 1965.

2. Mr. McGrath was a Vice President and a Director of John W. McGrath Corporation of 39 Broadway, New York City. The business of

the corporation was stevedoring and terminal operation.

3. The McGrath Corporation had a wholly owned subsidiary, Atlantic & Gulf Stevedores, Inc. with principal offices in Norfolk, Virginia and branch offices in many cities including New York.

4. Mr. McGrath was assigned by the McGrath Corporation to be in charge of its South Atlantic operations, including the supervision of Atlantic & Gulf. Part of Mr. McGrath's salary was charged by the McGrath Corporation to Atlantic & Gulf. Office and secretarial services were provided for Mr. McGrath in Norfolk by Atlantic & Gulf. The McGrath Corporation provided no office for Mr. McGrath in New York or elsewhere.

5. Mr. McGrath worked for the McGrath Corporation in New York City for about five years around 1950, but otherwise has worked for them only outside of New York State. In 1964 and 1965, he performed services only in Virginia. Mr. McGrath received compensation from the McGrath Corporation in the amount of \$46,157.69 in 1964 and \$29,811.00 in 1965.

6. A resolution in the minutes of the McGrath Corporation provided for the "continued employment" of Mr. McGrath (and certain other employees) for a period of five years dating from January 1, 1963 and provided that "in addition to his yearly salary" there would be payments over a period of five years "commencing with the date of his termination of employment" of an amount equal to the number of years of employment since January 1, 1963 multiplied by \$20,000.00. It is hereby found that, as testified to, this provision had never been carried out by the Corporation. It is especially noted that the sums received by Mr. McGrath bear no simple relationship to the figure of \$20,000.00 in the resolution.

CONCLUSIONS OF LAW

The compensation in question was for current services performed out-of-state and is not taxable in New York.


DECISION

The petition is granted and the deficiency is cancelled in its entirety.

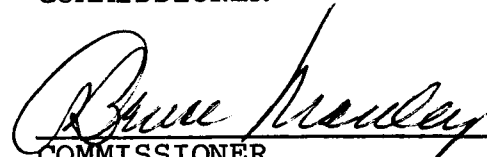
DATED: Albany, New York

August 16, 1972

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER