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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HELYN B. FLEMING

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) 1960 & 1961:

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 22nd day of February , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Helyn B. Fleming

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Helyn B. Fleming
1726 Jane Street
Wantagh, New York 11793

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

22nd day of February , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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HELYN B. FLEMING

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Tax Law for the (Year(s) 1960 & 1961 :

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Carl C. Banno, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Carl C. Banno, Esq.
146 Old Country Road
Mineola, New York 11501

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

22nd day of February , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 22, 1973

Melyn B. Fleming
1726 Jane Street
Wantagh, New York 11793

Dear Mrs. Fleming:

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,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HELYN B. FLEMING	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1960 and 1961.	:	

Helyn B. Fleming petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1960 and 1961.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York on December 8, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Carl C. Brunno, Esq. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Where the taxpayer received income from a sub-chapter "S" corporation in Kansas, should the taxpayer receive a credit against her New York income tax for her share of the Kansas state franchise tax paid by the corporation?

FINDINGS OF FACT

1. Petitioner, Helyn B. Fleming, timely filed New York State resident income tax returns for the years 1960 and 1961.

2. A Notice of Determination of deficiencies in income taxes for the years 1960 and 1961 was issued on April 14, 1967, against the taxpayer under File No1 2-661465.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Federal audit changes and correspondence indicated that the taxpayer received Colorado income from a partnership which was not reported to New York State.

5. It was determined that the taxpayer was liable for the Colorado income tax and was given a credit under section 670 of the Tax Law for the Colorado tax paid.

6. Additionally the taxpayer had unreported income from a Kansas sub-chapter "S" corporation. The sub-chapter "S" corporation paid the Kansas income tax.

7. The taxpayer contended that the income was earned in Kansas, a tax was paid in Kansas by the sub-chapter "S" corporation and that the taxpayer being a New York resident, the taxpayer should receive as a credit towards her New York State income tax, the amount of the franchise tax paid in Kansas by the corporation.

CONCLUSIONS OF LAW

A. The Kansas franchise tax was paid by the corporation and it was not a deductible personal tax.

B. The petition is denied and the determination of the deficiency is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 22, 1973

STATE TAX COMMISSION

Norman Gelberman
COMMISSIONER

Bruce Marley
COMMISSIONER

Milton Koerner
COMMISSIONER