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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DODWORTH POMERHN & MARGARET POMERHN

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) 1966 through
1968

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 10th day of July , 19 73 she served the within
Notice of Decision (or Determination) by (certified) mail upon Dodworth & Margaret
Pomerhn (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Dodworth & Margaret Pomerhn
Lake Shore Road West
Lake Tamarak
Stockholm, New Jersey 07460
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

10th day of July , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DODWORTH POMERHN & MARGARET POMERHN

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a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1966 through:
1968

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 10th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Harry Savin, 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: Harry Savin, C.P.A.
60 East 42nd Street
Suite 1533

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

10th day of July , 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

July 10, 1973

**Dodworth & Margaret Pomeroy
Lake Shore Road West
Lake Tamarak
Stockholm, New Jersey 07460**

Dear Mr. & Mrs. Pomeroy:

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 Petitions :
of :
DODWORTH POMERHN and MARGARET POMERHN : DECISION
for a Redetermination of a Deficiency :
or for refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1966 through 1968. :

Dodworth Pomerhn and Margaret Pomerhn, his wife, each filed petitions for the redetermination of separate deficiencies issued against them for personal income taxes under Article 22 of the Tax Law for the years 1966 through 1968.

A hearing was duly held on February 7, 1973, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York.

The petitioners were represented by Harry Savin, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James Scott, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether salary received for work performed at petitioners' New Jersey home is allocable outside of New York.

FINDINGS OF FACT

1. Petitioners were both employees of Pomerhn Studios, Inc. Mr. Pomerhn is a specialized type of commercial artist. His wife is a bookkeeper. The corporation withholds both income tax and social security taxes from their salaries.

2. The petitioners are the sole stockholders of Pomerhn Studios, Inc.

3. The corporation's office is at 141 East 44th Street, New York City. This is a single room of about 10 by 13 feet. It contains two desks, an artist's work space, shelves, and books. The corporation had no other office for purposes of corporation taxes, unemployment insurance or any other purpose.

4. Petitioners are residents of New Jersey listing their address at Lake Shore Road West, Lake Tamarak, Stockholm, New Jersey. Petitioner, Dodworth Pomerhn, maintains there is a room where he can perform his work. A telephone there had the same number as the corporation's New York office.

5. Petitioners filed combined income tax returns for 1966, 1967 and 1968. For 1966, the salaries of both of petitioners were allocated to New York by the fraction of 113 over 226 (one-half). For 1967, the salary of Mr. Pomerhn was allocated to New York by the fraction 117 over 234 (one-half) and the salary of Mrs. Pomerhn was allocated by the fraction 25 over 225 (one-ninth). For 1968, the salary of Mr. Pomerhn was allocated by the fraction 120 over 258 and the salary of Mrs. Pomerhn by the fraction 30 over 236.

6. Schedules submitted at the hearing by the petitioners showing the days allegedly worked outside the state for 1967 were consistent with the 1967 return. Similar schedules for 1968 showed 188 days for Mr. Pomerhn instead of the 138 days shown on the 1968 return and further showed 213 days for Mrs. Pomerhn instead of the 200 days shown on the return. No schedules were submitted for 1966. For none of the years was any diary or other original records produced.

7. The petitioners were not present at the hearing.

8. The deficiency notices for 1966 were issued on April 11, 1969, for 1967 on July 28, 1969, and for 1968 on August 30, 1971. The deficiencies with interest computed to the date of the notices are as follows:

	<u>1966</u>	<u>1967</u>	<u>1968</u>
Dodworth Pomerhn	\$1,865.00	\$2,077.50	\$2,424.51
	<u>222.74</u>	<u>160.24</u>	<u>345.40</u>
	\$2,087.74	\$2,237.74	\$2,769.91
Margaret Pomerhn	\$ 377.50	\$ 555.83	\$ 759.56
	<u>45.08</u>	<u>42.87</u>	<u>108.21</u>
	422.58	598.70	867.77

DECISION

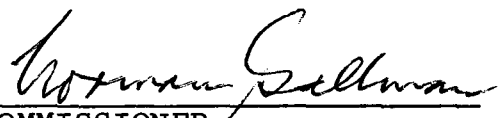
The petitioners have not carried the burden of proof that the work performed at home should be allowed for purposes of allocating income away from New York (see Burke v. Bragalini, 10 AD 2d 654).

The deficiency is found to be correct and due together with additional interest as computed under section 684 of the Tax Law.

DATED: Albany, New York

July 10, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER