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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY L. & FAYE HOROWITZ

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) 1963 & 1964

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

State of New York  
County of Albany

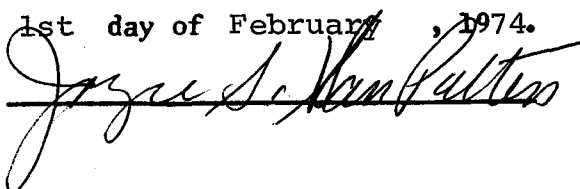
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of February , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Sidney L. & Faye Horowitz (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Sidney L. Horowitz  
220 Troy Del Way  
Williamsville, New York 14221

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

1st day of February , 1974.







STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
SIDNEY L. & FAYE HOROWITZ  
For a Redetermination of a Deficiency or  
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Taxes under Article(s) 22 of the  
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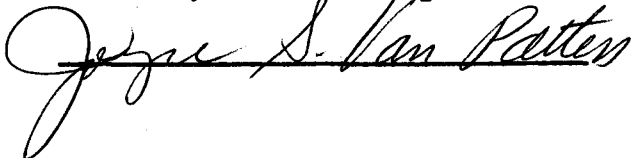
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of February , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon David P. Feldman, Esq.

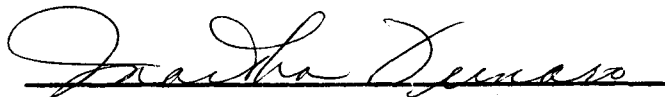
(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: David P. Feldman, Esq.  
Lutwack, Feldman & Burke  
287 Washington Street  
Buffalo, New York 14203  
and by depositing same enclosed in a postpaid 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

1st day of February , 1974.

  
Joseph S. Van Patten

  
Martha Funaro



AD 32 (6-73) 250M

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227

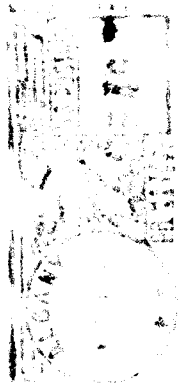
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*Subscribed by  
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David P. Feldman, Esq.  
Lutwack, Feldman & Burke  
287 Washington Street  
Buffalo, New York 14203

*207 Delaware Ave.  
Buffalo, N.Y.*

**CERTIFIED**  
No. 254046  
**MAIL**



FEB 4 1974  
Form 3858

2/14

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SIDNEY L. & FAYE HOROWITZ : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Years 1963 and 1964. :  
:

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The taxpayers, Sidney L. and Faye Horowitz, filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1963 and 1964.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York on June 25, 1971, before L. Robert Leisner, Hearing Officer.

The taxpayers were represented by David P. Feldman, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Did Sidney L. and Faye Horowitz each have separate income from United Business Services during 1963 and 1964, or was all income from it attributable to Sidney L. Horowitz alone?

FINDINGS OF FACT

1. Petitioners, Sidney L. and Faye Horowitz, husband and wife, filed separate income tax returns for the years 1963 and 1964 on Form IT-208.

2. A notice of deficiencies in income tax was issued against the petitioners under File No. 28022369. The Income Tax Bureau asserted that Faye Horowitz was not a bona fide partner in the United Business Services and that the amount of income she reported

as being distributable from it was determined to be taxable as income of Sidney L. Horowitz.

3. The taxpayers filed a petition for redetermination of the deficiencies.

4. Faye Horowitz was a business major in college, and had bookkeeping training.

5. United Business Services was formed by Sidney L. Horowitz and Faye Horowitz on November 2, 1945. Both understood that they were partners.

6. Faye Horowitz had worked in bookkeeping and office management for several theatres for six years prior to the formation of United Business Services.

7. In the beginning both Sidney L. and Faye Horowitz worked full time at United Business Services. Later, with a family, Faye Horowitz worked part-time and Sidney worked part-time in United Business Services and devoted part-time to S. L. Horowitz & Co., a separate accounting firm.

8. Throughout the years Sidney L. and Faye Horowitz contributed equally to United Business Services.

9. Faye Horowitz regularly worked part-time at the office doing posting, checking, and working on tax returns for small businesses including quarterly and annual reports and tax returns, such as withholding taxes, social security, unemployment insurance, disability insurance, workmen's compensation insurance and income tax returns among other matters, supervising some of the help and keeping the records of United Business Services.

10. The income from United Business Services was used by both Sidney L. and Faye Horowitz for their living expenses.

#### CONCLUSIONS OF LAW

A. Under section 61, Internal Revenue Code, compensation for services is includible in gross income of the recipient.

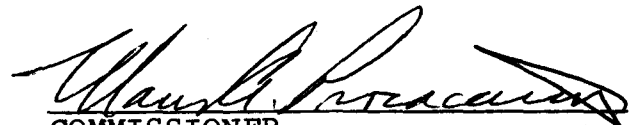


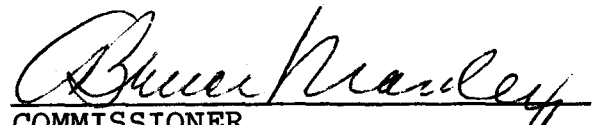
B. The income from United Business Services reported by Faye Horowitz in 1963 and 1964 was earned by her and is taxable to her. The income of Faye Horowitz from United Business in 1963 and 1964 is not taxable to Sidney L. Horowitz. Culbertson v. Com'r., 337 U.S. 733; Nichols v. Com'r., 32 T.C. 1322.

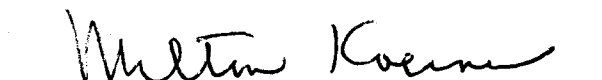
C. The taxpayers' petition is sustained and it is determined that there are no deficiencies in income tax against petitioners in 1963 and 1964.

DATED: Albany, New York  
February 1, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER