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PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

HARVEY W. & BEATRICE MORTIMER

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) 1961

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

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State of New York  
County of Albany

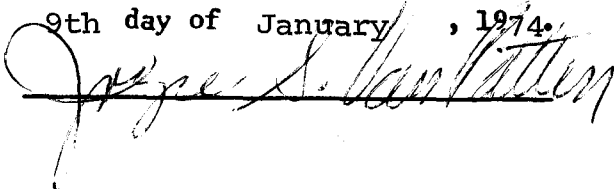
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon Harvey W. & Beatrice Mortimer (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Harvey W. Mortimer  
109 Alexander Avenue  
Montclair, New Jersey 07043

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

9th day of January , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

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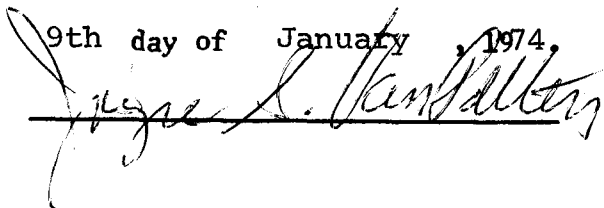
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501 Fifth Avenue  
New York, New York 10017

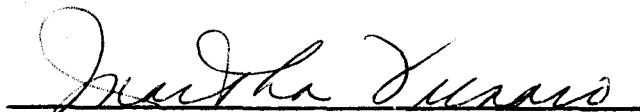
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James L. VanDyke

  
Martha Funaro



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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

January 9, 1974

Mr. & Mrs. Harvey W. Mortimer  
109 Alexander Avenue  
Montclair, New Jersey 07043

Dear Mr. & Mrs. Mortimer:

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

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HARVEY W. and BEATRICE MORTIMER : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Year 1961. :

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Harvey W. and Beatrice Mortimer filed a petition for the redetermination of a deficiency dated April 13, 1965, in the amount of \$638.58 plus interest of \$114.79 for a total of \$753.37 in personal income tax under Article 22 of the Tax Law for the year 1961.

In lieu of a hearing, the petition has been submitted on the basis of the file of the Income Tax Bureau. The petitioner is represented by J. Michael Brandt, C.P.A.

Said file has been duly examined and considered.

ISSUE

The primary issue in this case is whether a nonresident, who receives income from a law firm in New York, can allocate that income.

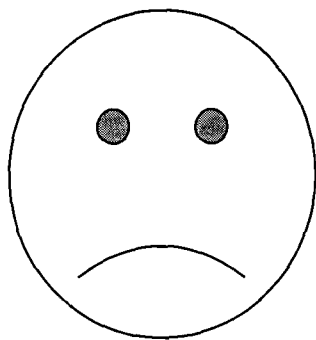
FINDINGS OF FACT

1. Petitioners are residents of Montclair, New Jersey and non-residents of New York.

2. Petitioner, Harvey W. Mortimer, is an attorney admitted to practice in New York State and registered to practice before the United States Patent Office. He is a partner in the law firm of Darby & Darby with offices at 405 Lexington Avenue, New York City.

3. The law firm of Darby & Darby is located at 405 Lexington Avenue, New York City. All of its partners, (but not Mr. Mortimer) were admitted to practice in the District of Columbia. None of

# CORRECTION FOLLOWS



*NOTE*: THE FOLLOWING  
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3. The law firm of Darby & Darby is located at 405 Lexington Avenue, New York City. All of its partners, (but not Mr. Mortimer) were admitted to practice in the District of Columbia. None of



them were admitted to practice in New Jersey. The firm is registered to practice before the United States Patent Office. The practice of the firm is exclusively confined to patents, trademarks, copyrights, trade practices, anti-trust and unfair competition. Much of the firm's work involves filing, arguing, and prosecuting patent applications before the patent office, which does not necessarily require membership in the bar of any state. Other work involved the litigation of patent matters in Federal Courts all over the United States.

Litigation of taxpayer and his law firm is exclusively in Federal Courts. Less than 10% of the Federal litigation is in Federal Courts located in New York. Every partner in the firm works a great deal of time outside of New York on litigation and patent prosecution. Frequent trips to the patent office in Washington, D.C. are made by all partners of the firm. It is estimated that approximately one-fourth of the firm's total net income in 1961 was actually earned out of New York, about 22% of the time of all the partners of the firm is spent outside the State of New York.

4. Petitioners filed a New York nonresident return showing Mr. Mortimer's partnership income allocated on the basis of days worked inside and outside of New York. The deficiency notice in effect denies any allocation of income on the basis that the partnership does not maintain an office outside of New York.

5. There is no evidence in this case that either Mr. Mortimer of the law firm carries on business from any fixed location in another jurisdiction or that any income tax was paid to another jurisdiction.

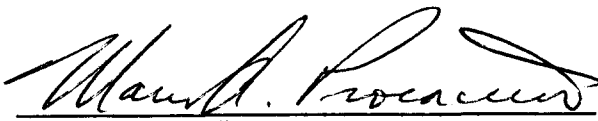
6. The issues herein were before the Commission in an application by Mr. Mortimer under Article 16 of the Tax Law with respect to the years 1950 and 1951. That case was decided against Mr. Mortimer.

CONCLUSIONS OF LAW


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

DATED: Albany, New York  
January 9, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER