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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GUSTAVE SIMONS

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) 16 of the
Tax Law for the Year(s) 1951, 1952 &
1953

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 23rd day of December , 1974 , she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Gustave Simons

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Gustave Simons

Kellog Hill Road
Weston, Connecticut 62504

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)~~
~~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

23rd day of December , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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1953

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 23rd day of December , 1974 , she served the within
Notice of ~~Determination~~ (or Determination) by ~~(certified)~~ mail upon Irving Lowey, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving Lowey, Esq.
41 East 42 Street
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

23rd day of December , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article(s) 16 of the
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State of New York
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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 23rd day of December, 1974, she served the within
Notice of ~~Decision~~ (or Determination) by ~~certified~~ mail upon David Zuckerman, 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: David Zuckerman, C.P.A.
60 Park Place
Newark, New Jersey

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

23rd day of December, 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
December 23, 1974

Mr. Gustave Simons
Malloy Hill Road
Weston, Connecticut 02504

Dear Mr. Simons:

Please take notice of the ~~DEFERMENT~~
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (s) ~~375~~ of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within ~~90 days~~
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,

L. Robert Leisner

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GUSTAVE SIMONS	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law for the Years 1951, 1952 and	:	
1953.	:	

Applicant, Gustave Simons, applied for a revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1951, 1952 and 1953.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 16, 1964, and June 22, 1965, before Martin Schapiro, Hearing Officer. The taxpayer was represented by Irving Lowey, Esq. and David Zuckerman, C.P.A.

ISSUES

I. Did the taxpayer properly allow expenses and deductions from his income for 1951, 1952 and 1953?

II. Did the taxpayer properly allocate income to any of New York State sources for 1951, 1952 and 1953?

FINDINGS OF FACT

1. Petitioner, Gustave Simons, timely filed New York State income tax returns for the years 1951, 1952 and 1953.

2. A Notice of Additional Assessment in personal income taxes for the year 1951 was issued on April 14, 1955, against

the taxpayer under File No. AA852577, for the year 1952 was issued on March 29, 1956, File No. AA992508, and for the year 1953 was issued on April 12, 1957, File No. B269202.

3. The taxpayer applied for revision or refund of the additional assessment.

4. The taxpayer was an attorney and a partner of Simons, Schur & Straus of New York City in 1951, 1952 and 1953. The taxpayer was admitted to the New York State Bar but not the bar of any other state.

5. The taxpayer was also in a partnership with a Certified Public Accountant. The partnership maintained a New Jersey office for practice before the U.S. Internal Revenue Service and represented clients from outside New York State in this practice during 1951, 1952 and 1953.

6. The taxpayer maintained office space, office equipment and law library and entertainment quarters in his Connecticut residence for dealing with both personal clients and clients of the New York firm during the years in contention.

7. The taxpayer contended that the work he performed in New Jersey and Connecticut in 1951, 1952 and 1953, since it was based on his license to practice before the U.S. Treasury Department and had nothing to do with New York courts, should be allocated as time spent outside New York State for income tax purposes during these years. The taxpayer claimed a deduction for depreciation of the Connecticut office equipment for 1951.

8. The taxpayer introduced no substantial evidence why some of his claimed business expenses should not be disallowed

as estimated and in excess of an amount which may be considered ordinary and necessary.

9. The New York State Income Tax Bureau disputed the taxpayer's deduction of \$26,030.42 for 1953 (based on bad debts or expenses advanced on behalf of clients and not repaid). Upon audit, the U.S. Internal Revenue Service allowed this deduction for 1953.

CONCLUSIONS OF LAW

A. The courts have held, in a similar case, that the applicant's "income from the practice of law, for services performed without the state, is from a profession carried on within the state".

Applicant's "right to perform legal services in places other than in the State of New York is primarily based entirely on the fact that he is admitted to practice law in this state... He was not engaged in any ordinary business which he could legally transact anywhere. To the contrary he could lawfully hold himself out as only entitled to practice law in the State of New York...Except for applicant's admission to practice in this state it would be beyond his authority to act as an attorney elsewhere". Carpenter v. Chapman et al. 276 App. Div. 634 (3rd Dept. 1950).

The allocation of income, earned by the taxpayer in 1951, 1952 and 1953 to any out of state sources, is disallowed. The 1951 depreciation claimed for Connecticut office equipment is disallowed.

B. The taxpayer failed to sustain the burden of proof why some of his business expenses should not be disallowed as estimated

and in excess of an amount which may be considered ordinary and necessary. Tax Law section 360(1).

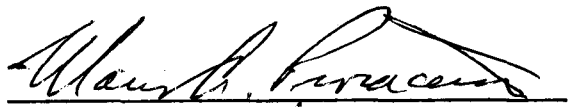
C. The deduction by the taxpayer of \$26,030.42 for 1953 is allowed based upon the audit by the U.S. Internal Revenue Service.


D. The application of the taxpayer, except as modified by the above allowed deduction for 1953, is denied and the notices of additional assessment of income tax for 1951, 1952 and 1953 except as modified herein are sustained.


E. Pursuant to the Tax Law interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
December 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER