

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HOWARD KISS and SHIRLEY KISS : AFFIDAVIT OF MAILING  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(a)~~ 22 of the :  
Tax Law for the Year ~~(a)~~ or ~~Period(x)~~ 1970 :

State of New York  
County of Albany

Denise Burke , 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 24th day of August , 1976, she served the within Notice of Decision by (certified) mail upon Howard Kiss and Shirley Kiss (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard Kiss and Shirley Kiss  
2526 Wilmette Avenue  
Titusville, Florida 32780  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~of the~~) 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

24th day of August , 1976.

Denise Burke

Janet Bush

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD KISS and SHIRLEY KISS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article 22 of the  
Tax Law for the Year ~~(x)~~ or ~~Repealed~~ 1970

State of New York  
County of Albany

Denise Burke, 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 24th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Marvin E. Landau, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Marvin E. Landau, Esq.  
425 Park Avenue South  
New York, New York 10016  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

24th day of August, 1976

Denise Burke

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

August 24, 1976

Howard Kiss and Shirley Kiss  
2526 Wilmette Avenue  
Titusville, Florida 32780

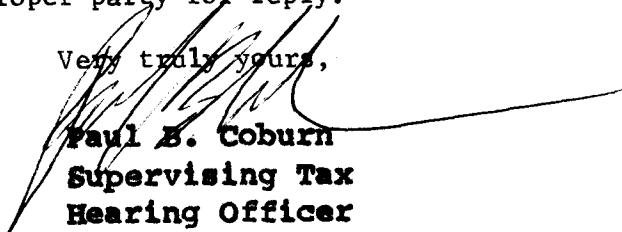
Dear Mr. & Mrs. Kiss:

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

Please take further notice that pursuant to  
Section(x) **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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul E. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



FINDINGS OF FACT

1. Petitioners, Howard Kiss and Shirley Kiss, timely filed a New York State income tax nonresident return for the year 1970. He claimed that he received no income within New York State.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Howard Kiss and Shirley Kiss, indicating that compensation, totaling \$45,000.00, received from Ex-Lax, Inc. was for past services and was for services performed within New York State. Accordingly a Notice of Deficiency was issued in the amount of \$3,624.81 plus interest of \$260.26 for a total of \$3,885.07.

3. Petitioner, Howard Kiss, had been employed by Ex-Lax, Inc. since 1951. Since August 23, 1966, he was vice president in charge of production for Ex-Lax, Inc. Upon impending retirement in 1969, he entered into a ten-year agreement with the company, under which he would continue to act as a consultant, because of his knowledge and experience in the company's business affairs. The employment period and consultant services were set forth in the contract, which also stated that he was to be provided with suitable office space and secretarial assistance, in connection with the performance of services at the executive offices of the company. The compensation was fixed at \$45,000.00 per annum. Deductions for

taxes were to be withheld. Clauses in the agreement prevented petitioner, Howard Kiss, from competitive employment, and also prevented his disclosure of the company's trade secrets.

4. Petitioner, Howard Kiss, in April 1969 sold his stock in Ex-Lax, Inc. to the General Cigar Co., which purchased a substantial number of shares and thus became the controlling stockholder. General Cigar confirmed the agreement between the petitioner and Ex-Lax, Inc.

5. Petitioner, Howard Kiss, was not called upon by Ex-Lax, Inc. during the year in issue, 1970, for any services. During said year, he was paid \$45,000.00 in monthly payments. These were mailed to him at his residence in Bath, Maine.

#### CONCLUSIONS OF LAW

A. That petitioners, Howard Kiss and Shirley Kiss, were not residents of New York State in 1970.

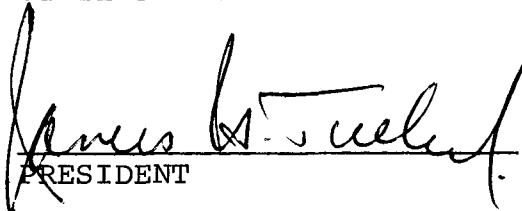
B. That petitioner, Howard Kiss, did no work for Ex-Lax, Inc. during 1970 in New York State.

C. That the income of petitioner, Howard Kiss, during the year 1970 was paid pursuant to the 1969 contract for consultation and not for past services rendered.

D. That the petition of Howard and Shirley Kiss is granted,  
and the Notice of Deficiency issued June 26, 1972 is cancelled.

DATED: Albany, New York  
August 24, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER