

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THOMAS F. GLEASON and MARGARET D. GLEASON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (X) 22 of the :  
Tax Law for the Year(s) ~~XXXXXXX~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Anthony Kadela , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of May , 1979, he served the within  
Thomas F. & Margaret D.  
Notice of Decision by (certified) mail upon Gleason

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Thomas F. & Margaret D. Gleason  
70 Munn Ave.  
Bogota, New Jersey 07603

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 ~~(XXXXXXX)~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXX~~ petitioner.

Sworn to before me this

23rd day of May , 1979

Marilyn J. Paparian

Anthony Kadela

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

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Taxes under Article (X) 22 of the :  
Tax Law for the Year(s) ~~XXXXXXX~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Anthony Kadela

, being duly sworn, deposes and says that

~~X~~he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of May, 1979, ~~X~~he served the within  
Notice of Decision by (certified) mail upon Robert F. Ross, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Robert F. Ross, Esq.  
250 West 57th St., Suite 1918  
New York, New York 10019

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

23rd day of May, 1979

Marilyn J. Papineau

Anthony Kadela



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

May 23, 1979

Thomas F. & Margaret D. Gleason  
70 Minn Ave.  
Bogota, New Jersey 07603

Dear Mr. & Mrs. Gleason:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~60~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**MICHAEL ALEXANDER**  
**SUPERVISING TAX HEARING OFFICER**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS F. GLEASON and MARGARET D. GLEASON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1969, 1970	:	
and 1971.	:	

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Petitioners, Thomas F. Gleason and Margaret D. Gleason, 70 Munn Avenue, Bogota, New Jersey 07603, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970 and 1971 (File No. 12622).

A formal hearing was held before George F. Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 10, 1977 at 2:45 P.M. Petitioners appeared by Robert F. Ross, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

#### ISSUE

Whether the services performed by petitioner Thomas F. Gleason in New Jersey were done so for reasons of his convenience, or rather for the necessity of the employer.

#### FINDINGS OF FACT

Petitioners, Thomas F. Gleason and Margaret D. Gleason, filed joint New York State income tax nonresident returns for the years at

issue. On the returns, all of the income petitioner Thomas F. Gleason received from his employer, T.J.W. Gleason Corp., was reported as income from New York State sources.

2. Petitioners timely filed a Claim for Credit or Refund of Personal Income Tax for each of the years at issue. This was done on the grounds that none of the income received from Mr. Gleason's employer was subject to tax by New York State, since all of the services performed by him were performed outside New York.

3. On December 4, 1972, the Income Tax Bureau denied said claims. Petitioners, Thomas F. Gleason and Margaret D. Gleason, then petitioned for redetermination of the deficiency or for refund of personal income taxes for the years at issue.

4. T.J.W. Gleason Corp. was organized in New York State in 1962. During the years at issue, it listed its address as 1414 York Avenue, New York, New York, and operated two taverns in New York City. Mr. Gleason was a stockholder and officer (secretary-treasurer) of the corporation and performed accounting, bookkeeping and administrative services for the corporation. Mr. Gleason testified that he worked on the books of the corporation "about ten hours, seven days a week."

5. Mr. Gleason testified that the corporation had no office space in New York and that he performed all of his services at an office in his home in New Jersey. He contended that this was done for the benefit of the corporation and not for his convenience.

6. During the years at issue, T.J.W. Gleason Corp. did not conduct any business or make any sales in the State of New Jersey.

7. Petitioners did not show that during the years at issue, Thomas F. Gleason did not render any services in New York State for T.J.W. Gleason Corp. as an officer-employee of said corporation.

#### CONCLUSIONS OF LAW

A. That petitioner Thomas F. Gleason rendered services in New York State in the performance of his duties for T.J.W. Gleason Corp. in each of the years at issue; that the services performed by said petitioner in New Jersey were performed there by reason of his convenience and not for the necessity of T.J.W. Gleason Corp., in accordance with the meaning and intent of 20 NYCRR 131.16. (The facts in this case are distinguishable from the facts in the Matter of Howard and Joan C. Baron, State Tax Commission decision dated September 20, 1978).

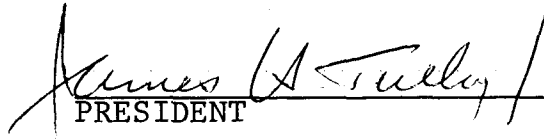
B. That the income received by Thomas F. Gleason from T.J.W. Gleason Corp. during the years at issue was income derived from New York sources, within the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.4(b).


C. That the petition of Thomas F. Gleason and Margaret D. Gleason is denied, and that the denial of refund claims by the Income Tax Bureau dated December 4, 1972 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

May 23, 1979

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER