

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
George G. & Margaret F. Shiya :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1969 & 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon George G. & Margaret F. Shiya, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George G. & Margaret F. Shiya
116 Woodland Ave.
Ridgewood, NJ 07450

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
George G. & Margaret F. Shiya :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1969 & 1970. :

State of New York
County of Albany

Jay Vredenburg, 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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon Alvin R. Cowan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Alvin R. Cowan
Abrams & Cowan
400 Madison Ave.
New York, NY 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 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
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 2, 1980

George G. & Margaret F. Shiya
116 Woodland Ave.
Ridgewood, NJ 07450

Dear Mr. & Mrs. Shiya:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alvin R. Cowan
Abrams & Cowan
400 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE G. SHIYA and MARGARET F. SHIYA	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, George G. Shiya and Margaret F. Shiya, 116 Woodland Avenue, Ridgewood, New Jersey 07450, filed claims for refund of personal income tax for the years 1969 and 1970, as well as a petition for redetermination of the denial of those claims (File No. 00617).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1976 at 9:15 A.M. and continued on January 17, 1978 at 10:20 A.M. Petitioners appeared by Alvin R. Cowan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman and Francis Cosgrove, Esqs., of counsel). A stipulation of agreed facts was made part of the record at the formal hearing.

ISSUE

Whether income received by petitioners, nonresidents, constituted taxable income derived from a profession carried on in New York State.

FINDINGS OF FACT

1. Petitioners, George G. Shiya and Margaret F. Shiya, timely filed New York State income tax nonresident returns for 1969 and 1970. They paid the tax shown to be due on those returns of \$5,222.80 for 1969 and \$5,237.94 for 1970.

2. On September 7, 1971, petitioners, George G. Shiya and Margaret F. Shiya, timely filed claims for refund of income tax paid for 1969 and 1970.

3. On January 29, 1973, the Income Tax Bureau disallowed in full petitioners' claims.

4. On January 20, 1975, petitioners timely filed a petition for redetermination of a deficiency or for refund of income tax paid for 1969 and 1970. Petitioners claimed that the taxes paid by them and at issue herein were based on income received by George G. Shiya in the form of royalties paid by Alfred A. Knopf, Inc., book publishers located in New York City, and that said royalties were not taxable to nonresidents.

5. The agreed statement of facts stated:

"1. During the calendar years 1969 and 1970, taxpayers GEORGE G. SHIYA and MARGARET F. SHIYA resided at 116 Woodland Avenue, Ridgewood, New Jersey.

2. During the calendar years 1969 - 1970 taxpayer GEORGE G. SHIYA maintained an office for the practice of law at 115 Broadway, New York City, N.Y.

3. Taxpayers duly filed New York State non-resident income tax returns for the calendar years 1969 - 1970 and paid income taxes in the sum of \$5,222.80 for 1969 and \$5,237.94 for 1970.

4. Khalil Gibran, a writer and a citizen of the United States, residing in New York County, New York State, died on April 12, 1931 leaving a Last Will and Testament which failed to name an Executor.

5. Pursuant to said Last Will and Testament, said Khalil Gibran left to his home town of Bechari in the Republic of Lebanon, the royalties on his copyrights of books written by him and published by Alfred A. Knopf, Inc.

6. Nael K. Basile, M.D. was appointed by the National Committee of Gibran located in Lebanon as its attorney in fact in New York City to retain counsel to protect the interests of the committee in the estate of said Khalil Gibran.

7. Said Nael K. Basile retained taxpayer George G. Shiya as attorney for said committee and agreed to pay him as his fee, 35% of the renewal royalties from said books.

8. A sister of deceased claimed full right to the royalties and sued Knopf thereafter in the U. S. District Court for the Southern District of New York. Knopf interpleaded the National Committee of

Gibran and George G. Shiya represented said Committee in the litigation. Prior to said litigation Knopf had been paying the royalties to the National Committee of Gibran pursuant to the will. No one had contested said payments for a period of twenty-eight years.

9. Pursuant to judgment in the U. S. District Court for the Southern District of New York, the National Committee of Gibran was decreed to be entitled to the royalties.

10. Taxpayer George G. Shiya petitioned the U. S. District Court for the Southern District of New York for a determination of his fees and said fees were fixed at a 25% undivided interest in the royalties. Judgment fixing said fee was entered in the Office of the Clerk of the U. S. District Court for the Southern District of New York. The Circuit Court of Appeals for the Second Circuit affirmed the judgment of June 11, 1967. Certiorari was denied by the U. S. Supreme Court on January 15, 1968, in 1968.

11. Taxpayer George G. Shiya received his accumulated royalties through 1968, reported said royalties, and paid income taxes thereon to the State of New York. His time to claim refund thereof expired prior to commencement of the instant proceeding.

12. The determination of the U. S. District Court was that taxpayer George G. Shiya was awarded a right to 25% of the royalties paid to the estate of Khalil Gibran and royalties thereafter to be paid.

13. Taxpayer George G. Shiya received royalties for the year 1969 in the sum of \$56,267.43 and for the year 1970 in the sum of \$68,461.78."

6. Petitioner George G. Shiya was a resident of New Jersey and maintained an office in New York City, from which he practiced law during 1969 and 1970.

CONCLUSIONS OF LAW

A. That the monies received by petitioner George G. Shiya and reported as income in 1969 and 1970 were compensation for his services as attorney in Shiya v. National Committee of Gibran, 381 F. 2d 602, cert. denied 389 U.S. 1048 and Gibran v. National Committee of Gibran, 153 F. Supp. 854, aff'd 255 F. 2d 121, cert. denied 358 U.S. 828. Petitioner George G. Shiya brought his action in the United States District Court for the Southern District of New York, for compensation for the services he had rendered as an attorney. The court papers show that he sued under the New York State Judiciary Law, section

475 and Rule 15 of the Federal District Court. The court decision fixing the amount of the compensation was not for royalties, but was to be measured by the amount the decedent's royalties might yield to petitioner George G. Shiya's client.

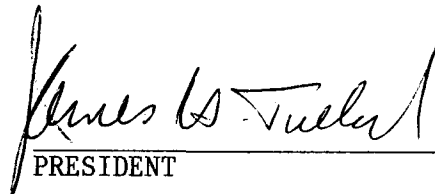
B. That petitioner George G. Shiya, although a nonresident, maintained a law office in New York, brought the actions in the Gibran matter in New York and won his compensation suit in New York. The monies received in 1969 and 1970 were derived from the practice of a profession in New York and, therefore, are taxable to a nonresident. (Section 632(b)(1)(B) of the Tax Law.)

C. That the denial of petitioners' claim for refund of personal income taxes for 1969 and 1970 dated January 29, 1973 is sustained and the petition of George G. Shiya and Margaret F. Shiya is in all respects denied.

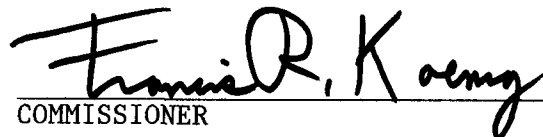
DATED: Albany, New York

MAY 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER