

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Estate of J. Arthur Warner :  
and Aline Warner : 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 1960-1970. :

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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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Estate of J. Arthur Warner, and Aline Warner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of J. Arthur Warner  
and Aline Warner  
12 Doubling Road  
Greenwich, CT

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  
17th day of October, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Estate of J. Arthur Warner :  
and Aline Warner : 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 1960-1970. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Martin Berlin 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. Martin Berlin  
c/o Nathan Berkmen  
29 Broadway  
New York, NY 10006

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  
17th day of October, 1980.

Deborah A. Berk

J. Vredenburg

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

October 17, 1980

Estate of J. Arthur Warner  
and Aline Warner  
12 Doubling Road  
Greenwich, CT

Dear Ms. Warner:

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  
Martin Berlin  
c/o Nathan Berkmen  
29 Broadway  
New York, NY 10006  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
THE ESTATE OF J. ARTHUR WARNER	:	DECISION
(ALINE WARNER, EXECUTRIX)	:	
AND	:	
ALINE WARNER	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1960 through 1970.	:	

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Petitioners, the Estate of J. Arthur Warner (Aline Warner, Executrix) and Aline Warner, 12 Doubling Road, Greenwich, Connecticut, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1960 through 1970 (File No. 00579).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976 at 1:30 P.M. The petitioners appeared by Martin Berlin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether requests for admissions on behalf of each of the petitioners, the Estate of J. Arthur Warner (Aline Warner, Executrix) and Aline Warner, should be deemed admitted for lack of response by the Law Bureau.

II. Whether J. Arthur Warner had income subject to New York State income tax for the years 1960 through 1970.

III. Whether petitioner Aline Warner had income subject to New York State income tax for the years 1960 through 1970.

FINDINGS OF FACT

1. J. Arthur Warner did not file New York State income tax returns for the years 1960 through 1970.

2. Petitioner Aline Warner did not file New York State income tax returns for the years 1960 through 1970.

3. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner the Estate of J. Arthur Warner (Aline Warner, Executrix), imposing deficiencies in personal income tax for the years 1960 through 1970 as follows:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1960	\$ 673.65	\$ 533.17	\$ 1,206.82
1961	748.50	547.51	1,296.01
1962	748.50	502.60	1,251.10
1963	748.50	457.69	1,206.19
1964	748.50	412.78	1,161.28
1965	748.50	367.87	1,116.37
1966	937.50	404.50	1,342.00
1967	1,137.50	422.55	1,560.05
1968	1,375.50	428.43	1,803.93
1969	1,624.50	408.51	2,033.01
1970	1,890.00	361.88	2,251.88
TOTAL	\$11,381.15	\$4,847.49	\$16,228.64

The deficiencies were based upon a failure to submit information on fees received from a New York corporation during the period in issue, and were also based upon said fees being paid for services performed in Connecticut rather than New York State, for reasons of the employee's convenience.

4. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner Aline Warner imposing personal income tax, penalty and

interest for the years 1960 through 1970 as follows:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1960	\$ 1,563.75	\$ 390.94	\$ 1,237.66	\$ 3,192.35
1961	1,737.50	434.38	1,270.93	3,442.81
1962	1,737.50	434.38	1,166.68	3,338.56
1963	1,737.50	434.37	1,062.43	3,234.30
1964	1,737.50	434.37	958.18	3,130.05
1965	1,737.50	434.37	853.93	3,025.80
1966	1,937.50	484.38	835.97	3,257.85
1967	2,137.50	534.37	794.02	3,465.89
1968	2,733.50	683.38	851.40	4,268.28
1969	3,013.50	1,431.41	757.80	5,202.71
1970	3,290.00	1,381.80	629.94	5,301.74
TOTAL	\$23,363.25	\$7,078.15	\$10,418.94	\$40,860.34

The deficiencies were based upon a failure to submit information on fees received from a New York corporation during the period in issue, and were also based upon said fees being paid for services performed in Connecticut rather than New York State for reasons of the employee's convenience.

5. On November 5, 1976, a request for admissions was served upon the Law Bureau of the Department of Taxation and Finance, concerning the tax liability in issue here of petitioner the Estate of J. Arthur Warner. This request was made pursuant to section 601.11 of the State Tax Commission Rules of Practice and Procedure. Section 601.11(b)(1)(C) states that a request for admissions may be submitted by a party upon another party not later than twenty days before the formal hearing concerning:

"the truth of matter of fact set forth in the request. The request shall pertain to matters as to which the party requesting the admission reasonably believes there can be no substantial dispute at the hearing and which are within the knowledge of the adverse party or can be ascertained by him upon reasonable inquiry." (Emphasis supplied)

The Law Bureau did not respond to the request.

6. On November 5, 1976, a request for admissions was served upon the Law Bureau, concerning the tax liability in issue here of petitioner Aline Warner. The Law Bureau did not respond to the request.

7. The requests for admission in Findings of Fact "5" and "6", supra, were timely served.

8. There was extensive testimony at the formal hearing that petitioners, the Estate of J. Arthur Warner (Aline Warner, Executrix) and Aline Warner, were uncooperative with the Income Tax Bureau in its efforts to ascertain information concerning the income of said petitioners. They refused at all times to provide copies of their Federal 1040 forms for the years in issue or any other paperwork which would aid the Income Tax Bureau and, subsequently, the Law Bureau in determining necessary facts for the ascertainment of the tax liability of petitioners for the years in issue. The Income Tax Bureau relied solely on inconclusive information received from the Internal Revenue Service which indicated that an audit had been performed for 1964.

9. Petitioner Aline Warner was the controlling shareholder of Guild Equities, Inc. during the period in issue. Guild Equities, Inc. was incorporated under the laws of New York State and maintained no offices outside New York State.

10. During the years in issue, J. Arthur Warner was paid by Guild Equities, Inc. for services performed entirely in Connecticut. No documentary or other substantial evidence was offered to prove either that said services were rendered as an independent consulting contractor rather than as an employee, or that said services were performed in Connecticut for the necessity of the employer as opposed to the convenience of the employee.

11. During the years in issue, petitioner Aline Warner was paid for services by Guild Equities, Inc. for services performed entirely in Connecticut. There was no documentary or other substantial evidence offered to prove that said services were rendered in Connecticut for the necessity of the employer as opposed to the convenience of the employee.

CONCLUSIONS OF LAW

A. That since the Law Bureau could not ascertain the facts in the requested admissions in Finding of Fact "5" and "6" upon reasonable inquiry, said requests for admissions shall not be deemed admitted.

B. That the Income Tax Bureau's projection of petitioners' income for the years at issue was arbitrary. There is no evidence in the record to indicate how said figures were arrived at, nor is there evidence to show that a proper audit was conducted.

C. That since the services rendered by J. Arthur Warner for Guild Equities, Inc. during the years 1960 through 1970 were rendered totally without New York State, in Connecticut, the income received for these services is entirely allocable without New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.4(b).

D. That, since the services rendered by petitioner Aline Warner for Guild Equities, Inc. during the years 1960 through 1970 were rendered totally without New York State, in Connecticut, the income received for these services is entirely allocable without New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.4(b).

E. That the petitions of the Estate of J. Arthur Warner (Aline Warner, Executrix) and Aline Warner are granted and the notices of deficiency issued June 24, 1974 are cancelled.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER