

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert P. & Mary Jane M. Gibbons :
for Redetermination of a Deficiency or for Refund :
of Personal Income and Unincorporated Business :
Taxes under Articles 22 and 23 & 30 of the Tax Law :
and Chapter 46, Title U of the Administrative Code :
of the City of New York for the Years 1975 & 1976. :

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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Robert P. & Mary Jane M. Gibbons, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

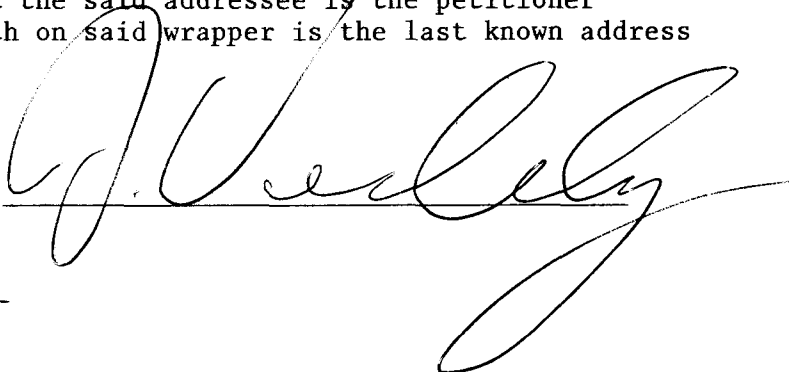
Robert P. & Mary Jane M. Gibbons
46 Knoll Rd.
Tenafly, NJ 07670

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
26th day of November, 1982.





AUTHORIZED TO ADMINISTER
OATHS AND SIGN TO RETURN
RECEIVED 1/1/83

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Robert P. & Mary Jane M. Gibbons :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Personal Income and Unincorporated Business
Taxes under Articles 22 and 23 & 30 of the Tax :
Law and Chapter 46, Title U of the Administrative
Code of the City of New York for the Years 1975 & :
1976.

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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Lawrence J. Kaplan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence J. Kaplan
Joseph Schacter & Co.
98 Cutter Mill Rd.
Great Neck, NY 11021

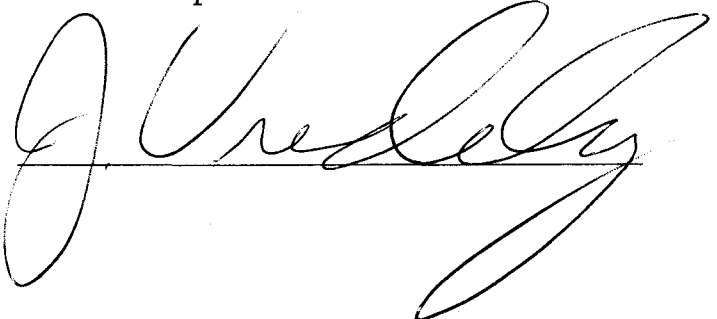
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
26th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS AND SIGN TO TAKE EVIDENCE
SECTION 174



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

November 26, 1982

Robert P. & Mary Jane M. Gibbons
46 Knoll Rd.
Tenafly, NJ 07670

Dear Mr. & Mrs. Gibbons:

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 & 722 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Lawrence J. Kaplan
Joseph Schacter & Co.
98 Cutter Mill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT P. GIBBONS and MARY JANE M. GIBBONS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law and Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Years 1975 and 1976.	:	

Petitioners, Robert P. Gibbons and Mary Jane M. Gibbons, 46 Knoll Road, Tenafly, New Jersey 07670, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1975 and 1976 (File No. 26690).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1981 at 1:15 P.M. Petitioners appeared by Joseph Schachter & Co. (Lawrence J. Kaplan, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner Robert P. Gibbons properly allocated his consulting and director fees to sources within and without New York State for 1975 and 1976.

II. Whether the days on which petitioner Mary Jane M. Gibbons worked at her home in New Jersey constituted days worked outside New York State for the purpose of income allocation for 1976.

III. Whether the Audit Division properly asserted penalties against petitioners pursuant to section 685, subdivisions (a)(1) and (a)(2) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Robert P. Gibbons and Mary Jane M. Gibbons, filed a New York State income tax nonresident return for 1975. For the year 1976, petitioners filed a New York State income tax nonresident return for the period January 1, 1976 to August 31, 1976, and a New York State income tax resident return for the period September 1, 1976 to December 31, 1976, together with a Schedule for Change of Resident Status (Form CR-60.1). For 1975 and 1976, petitioner Robert P. Gibbons allocated his personal income on the basis of days worked within and without New York State. Petitioner Robert P. Gibbons failed to file unincorporated business tax returns for the years at issue. For 1976, petitioner Mary Jane M. Gibbons allocated her personal income on the basis of days worked within New York State and days worked without New York State.

2. On July 10, 1978, the Audit Division issued a Statement of Audit Changes against petitioners on the basis that days worked at home by petitioner Mary Jane M. Gibbons in 1976 constituted days worked within New York State and New York City, and that income earned by petitioner Robert P. Gibbons from his self-employment business was subject, in toto, to personal income and unincorporated business taxes for 1975 and 1976. Based on the Statement of Audit Changes, the Audit Division issued a Notice of Deficiency against petitioner Robert P. Gibbons for subject year asserting personal income tax of \$1,989.27, less credit of \$51.26 due petitioner Mary Jane Gibbons, unincorporated business tax of \$614.51, plus penalties and interest of \$773.05, for a total due of \$3,325.57.

3. Petitioner Robert P. Gibbons did not dispute the Audit Division's findings that the fees he earned as a director and as a consultant are subject to unincorporated business tax, and as a corollary, result in an increase to his personal income allocable to New York State for 1975 and 1976. The only issue raised by petitioner Robert P. Gibbons is the Audit Division's failure to allocate his self employment earnings to sources within and without New York State.

4. Petitioner Robert P. Gibbons earned consulting and director fees of \$10,000.00 and \$18,673.00 for 1975 and 1976 respectively. Petitioner contends that of the foregoing amounts, \$8,000.00 and \$10,704.60 for 1975 and 1976 respectively were earned without New York State. In support of his contention, petitioner submitted, subsequent to the hearing, unattested letters from Weldotron Corporation and Amivest Corporation, both dated September 18, 1981, which stated, in part, that fees were paid to the petitioner for work done without New York State.

Petitioner also performed services for Carborundum Corporation, but was unable to obtain a letter from said entity, as the people he worked for are no longer employed by Carborundum. In lieu thereof, he submitted copies of vouchers incurred for expenses without New York State.

5. Petitioner Mary Jane M. Gibbons for 1976 was employed in the New York offices of J. C. Edgecombe Co., Inc., as a bookkeeper.

6. Petitioner Mary Jane M. Gibbons contends that she worked in a dangerous area of New York City. She contends that to avoid possible harm to herself, and, for the convenience of her employer, she worked on the books and records of said employer in her home, and came into New York City only occasionally.

CONCLUSIONS OF LAW

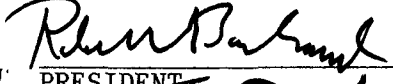
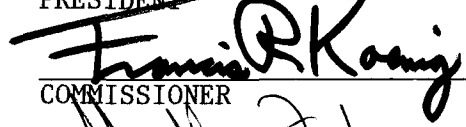

A. That petitioner Robert P. Gibbons failed to sustain the burden of proof required under sections 689(e) and 722 of the Tax Law to show that he maintained a bona fide office which was systematically and regularly used without the State of New York [Tax Law Section 707(a), 20 NYCRR 207.2]. That the letters submitted by petitioner fail to indicate that petitioner maintained an office without New York State from which he regularly conducted his business.

B. That the services performed by petitioner Mary Jane M. Gibbons at her out-of-state home during 1976 were for her convenience and not for the necessity of her employer. That the nature of her work was such that it could have been undertaken at the employer's New York offices (Matter of Speno v. Gallman, 35 N.Y.2d 256, Matter of Grosi v. State Tax Commission, 62 A.D.2d 1117). That such days spent working at home do not represent days worked outside New York State and New York City for income allocation purposes within the meaning and intent of section 632(b)(1)(B) of the Tax Law and Title U 46-4.0 of the Administrative Code of the City of New York.

C. That the petitioners have not contested the imposition of penalties; accordingly, the penalties are sustained.

D. That the petition of Robert P. Gibbons and Mary Jane M. Gibbons is denied; that the Notice of Deficiency issued against petitioner Robert P. Gibbons, dated April 5, 1979 is sustained, together with such penalties and additional interest as may be legally due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

ACTIN' PRESIDENT

COMMISSIONER

COMMISSIONER