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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*Ingalls, Edmund F. A-2*  
*+ Loretta*

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the matter of the petition of  
Edmund F. & Loretta Ingalls for a  
redetermination of a deficiency or  
for refund of personal income taxes  
under Article 22 of the Tax Law for  
the year 1963

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on March 9, 1967. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the taxpayer properly allocated his salary for services performed within and without the State.

A notice of deficiency and statement of audit changes were issued on November 22, 1965 (File No. 38536538) determining additional tax due on the basis that allocation of the taxpayer's salary was not allowable since time spent at home is not recognized as a proper basis for allocation of salary income.

The taxpayer resides in Glenville, Connecticut. He is the manager of the Technical Information Service of the American Institute of Certified Public Accountants, which has its office in New York City. His usual duties consisted of answering technical inquiries by members of the organization on accounting problems. As part of his duties he was also required to incorporate these answers and technical opinions into a book which was completed by him in 3 1/2 years and consisted of three volumes. The book was written in the taxpayer's home with the knowledge and consent of his superiors.

The taxpayer was furnished an office by his employer in New York City which was available for his use at any time. He was provided with a secretary at his office. The taxpayer's employer did not require him to perform any services at home.

The taxpayer contended that he could not work on the book in an office atmosphere and was therefore required to perform this work at home. He allocated his salary income on the basis that it was partly earned inside and outside New York State claiming that salary attributable for work done at home on the accounting book was income earned outside of New York State.

It is my opinion that the taxpayers are not entitled to an allocation of income for work performed at home since such work does not constitute services rendered without the State of New York in accordance with the provisions of Section 632(c), Article 22 of the Tax Law and that the work was done at home primarily for the taxpayer's greater convenience in accordance with the decisions of Burke v. Braschini, et al., 10 A D 2d 654, and Marshall v. Marsh, 10 A D 2d 764.

For the reasons stated above, I recommend that the determination of the State Tax Commission denying the taxpayers' petition in the above matter be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

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Hearing Officer

FVD:rlp  
Enc. 5/1/67  
April 27, 1967

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION**  
**OF**  
**EDMUND F. & LORETTA INGALLS**  
**FOR A REDETERMINATION OF A DEFICIENCY**  
**OR FOR REFUND OF PERSONAL INCOME TAXES**  
**UNDER ARTICLE 22 OF THE TAX LAW FOR THE**  
**YEAR 1963**  
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The taxpayers having duly filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on March 9, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Edmund F. Ingalls, appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) The taxpayers filed a nonresident tax return for the year 1963 in which they allocated the salary income of the taxpayer, Edmund F. Ingalls, on the basis that it was earned partly inside and partly outside New York State; that the taxpayer claimed that he worked 120 days in his Connecticut home out of 323 days worked during the year.

(2) A notice of deficiency and statement of audit changes were issued on November 22, 1965 (File No. 35536538) on the basis that the allocation of salary for services performed within and without New York State was not allowable since time spent at home

is not recognized as a proper basis for allocation of salary income and finding additional income tax and interest due in the amount of \$322.19.

(3) That the taxpayer, Edmund V. Ingalls, resides in Connecticut; that he is the manager of the Technical Information Service of the American Institute of Certified Public Accountants, which has its office in New York City; that his usual duties consisted of answering technical inquiries by members on accounting problems; that in addition to his usual duties, the taxpayer was required by his superiors to incorporate answers to these inquiries and technical opinions into a three volume accounting manual.

(4) That the said taxpayer's normal work week during the year consisted of seven hours a day, five days a week, Monday through Friday; that he worked 173 days in New York State; that he spent 59 work days in his Connecticut home working on the accounting manual; that he worked 18 other days during the year in his Connecticut home working on the accounting manual.

(5) That the taxpayer was furnished an office in New York City by his employer; that the office was open to him at all times; that the taxpayer was furnished a secretary in his New York City office; that the taxpayer's employer did not require him to perform services anywhere else but in New York City.

Based upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

**DECIDES:**

(A) That there was no necessary ingredient required by the nature of the services performed by the taxpayer which necessitated the State of Connecticut or the home of the taxpayer as the locus of performance; that such services were performed by

the taxpayer at his home for his greater convenience and the income therefrom was attributable to services rendered within the State of New York in accordance with the provisions of Section 632(c) of the Tax Law.

(B) That accordingly, the notice of deficiency and statement of audit changes for the year 1963 (File No. 3-8536538) are correct and do not include any tax or other charges which could not have been lawfully demanded; that the taxpayers' petition for redetermination of a deficiency or for refund of personal income taxes for the year 1963 be and the same is hereby denied.

Dated: Albany, New York this 17th day of May, 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

JAMES R. MACDUFF

**Commissioner**

/s/

WALTER MACLYN CONLON

**Commissioner**