

STATE OF NEW YORK
STATE TAX COMMISSION

*For the Gilbert & Ruth
Loaec*
1971

In the Matter of the Petition

of

Gilbert & Ruth Loaec

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Gilbert &
Ruth Loaec (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Gilbert & Ruth Loaec
22283 Brookmill Road
Los Altos, California

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

15th day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GILBERT and RUTH LOAEC	:	
	:	DEFAULT
For Redetermination of a Deficiency or	:	ORDER
for Refund of Personal Income Tax	:	
Pursuant to Article 22 of the Tax Law	:	
for the Year 1963.	:	


The above-named taxpayers have petitioned the State Tax Commission for a redetermination of their tax deficiency as issued by the State Tax Commission on their 1963 Personal Income Tax return. A formal hearing on the petition was scheduled for December 18, 1970, at 9:15 a.m. at the offices of the State Tax Commission in the City of New York before Hearing Officer, Lawrence A. Newman. Notice of said hearing was duly given to the taxpayers, the taxpayers failed to appear at the hearing and no one appeared on their behalf. Their default has been duly recorded.

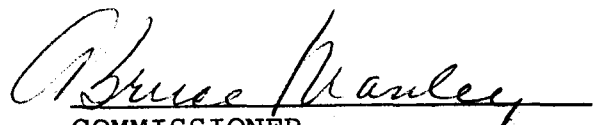
On motion of the attorney for the Department of Taxation and Finance, IT IS ORDERED that the petition is hereby denied.

DATED: Albany, New York

March 15, 1971

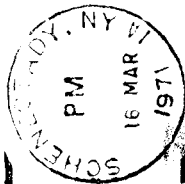
STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N.Y. 12226



- ☐ Moved, left no address
☐ No such number
☒ Moved, not forwardable
☐ Addressee unknown



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Gilbert & Ruth Loaec
22283 Brookmill Road
Los Altos, California

CERTIFIED

No 237902

MAIL



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

March 15, 1971

Gilbert & Ruth Loaec
22283 Brookmill Road
Los Altos, California

Dear Mr. & Mrs. Loaec:

Please take notice of the Default Order of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 690
the Tax Law any proceeding in court to review an adverse decision
must be commenced within 4 Months after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

*No other
address
3/15/71 JHN*

AD-112-1770

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GILBERT and RUTH LOAEC

For Redetermination of a Deficiency or
for Refund of Personal Income Tax
Pursuant to Article 22 of the Tax Law
for the Year 1963.

DEFAULT
ORDER

The above-named taxpayers have petitioned the State Tax Commission for a redetermination of their tax deficiency as issued by the State Tax Commission on their 1963 Personal Income Tax return. A formal hearing on the petition was scheduled for December 18, 1970, at 9:15 a.m. at the offices of the State Tax Commission in the City of New York before Hearing Officer, Lawrence A. Newman. Notice of said hearing was duly given to the taxpayers, the taxpayers failed to appear at the hearing and no one appeared on their behalf. Their default has been duly recorded.

On motion of the attorney for the Department of Taxation and Finance, IT IS ORDERED that the petition is hereby denied.

DATED: Albany, New York

March 15, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

NEW YORK STATE TAX COMMISSION

X

In the Matter of the PETITION

Of

DUNCAN R. & JULIA Q. LINSLEY

For a Redetermination of a Deficiency
and for Refund of Personal Income
Taxes under Article 22 of the Tax Law
for the Years 1961, 1962 and 1963

MOTION FOR RECON-
SIDERATION AND STATE-
MENT OF GROUNDS UPON
WHICH THE COMMISSION'S
DETERMINATION IS
MADE

X

The petitioners move for reconsideration by the Commission of its decision of January 20, 1971, denying petitioners' petition for redetermination of deficiencies or for refund of personal income taxes for the years 1961, 1962 and 1963 and sustaining the notice of deficiency for such years, and for a statement of the grounds or theory on which such determination is based, for the following reasons:

(1) Section 690(a) of Article 22 of the Tax Law provides for judicial review of a decision of the Commission "in the manner provided by law for the review of a final decision or action of administrative agencies of the state". Such review is afforded by the institution of an Article 78 proceeding (CPLR 7801 et seq) in the Supreme Court, Special Term, for the appropriate county, followed possibly by a transfer of the proceeding to the Appellate Division. Neither the Special Term, Supreme Court, nor the Appellate Division can intelligently review the determination in this matter unless the basis of the administrative action is set forth with clarity, since the court cannot guess at the theory underlying the commission's action. Moreover, the court cannot affirm an administrative determination by substituting its own correct ground for a wrong or unstated ground of the agency (SEC v. CHENERY CORP., 318 U.S.80, 87, 94, 332 U.S.194, 196).

(2) In view of the foregoing, the result of a judicial review of the determination in this proceeding would be a remand to the Commission for the same action that is requested by this motion. The decision of January 20, 1971 states no grounds, nor theory, nor legal basis for the application of the law and regulations to the findings of fact made. The decision contains conclusions only, -- a statement of the ultimate facts that the payments received did not constitute annuities and that the sublease was not a transaction entered into for profit. A reviewing court could not determine whether the decision follows as a matter of law from the findings of fact stated (cf. MATTER OF BARRY v. O'CONNELL, 303 N.Y. 46, 50-51). Indeed the conclusory statements in the decision do not constitute "a brief statement of the grounds of decision", as directed by the Tax Law itself (Sec. 689(a)).

The decision does not state that the payments under the consulting agreement are taxable as severance pay, although severance pay is "income received from sources within New York State for services rendered", to quote from conclusion A of the decision. It does not state whether the services for which the payments were made were rendered within or without the state. It does not state why such payments were not an annuity. It does not state whether or not the old regulation, section 413 under section 359, subdiv. 3, of Article 16, the old law (a section that read substantially the same as section 632(b)(2) of Article 22, the new law enacted in 1960) was applicable. It does not state whether or not the new regulation (sec. 131.4(d) under sec. 632(b)(2) of the new law), which was not issued until 1968, was intended to be retroactive to the years 1961, 1962 and 1963.

The foregoing observations are also pertinent to the distributions under the Deferred Compensation Agreement. There is, however, an additional omission in that the decision does not

state why, if the new regulation was intended to be retroactive, the payments of cash under that agreement do not fall within even the new regulation's definition of an annuity. Nor has the Commission made even a finding of fact as to the value of the stock distributed under this agreement, although it was restricted investment stock whose value was obviously less than its market value.

Nor does the decision state any ground for the conclusion that the sublease was not a transaction entered into for profit, nor even any finding of fact from which such conclusion might be derived. Is the ground for the conclusion that no profit in fact was made, or that a sublease entered into to minimize loss on moving to another state is not entered into for profit, or that the federal income tax ruling (GCM 1940-2 C.B.214) to the contrary is for some reason not controlling, despite the mandate of sections 631 and 632 of the Tax Law that income for New York tax purposes includes losses entering into the computation of income for federal tax purposes?

The difficulty of ascertaining the basis for the Commission's determination is compounded by the fact that no brief was filed in opposition to the petitioners' position.

WHEREFORE it is requested that the Commission reconsider its decision in this matter and determine that the petitioners are entitled to a refund of taxes for the years 1961, 1962 and 1963 in the amount of \$1,597.82, \$2,144.12 and \$1,305.04, respectively, and that in any event the Commission set forth the specific grounds or basis for its decision so that a court may intelligently review the decision at the present time without the necessity for a future remand for this purpose. It is also prayed that this motion be decided at the earliest possible time so that there may be a prompt judicial review.

Respectfully submitted,


EMIL SEBETIC