

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN & MARJORIE C. GRAHAM

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) 1961, 1965 & 1966

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 17th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon John & Marjorie C.

Graham (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: John & Marjorie C. Graham
c/o John Graham & Co.
1426 5th Avenue

Seattle, Washington 98101
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

17th day of March, 1972

Karl Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Ralph H. Kroner

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ralph H. Kroner
c/o Arthur Young & Company
277 Park Avenue
New York, New York 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 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

17th day of March , 1972

Ralph H. Kroner

Martha Funaro



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

Dated: Albany, New York

March 17, 1972

**John & Marjorie C. Graham
c/o John Graham & Company
1426 5th Avenue
Seattle, Washington 98101**

Dear Sir & Madam:

Please take notice of the **DECISION** 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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN & MARJORIE C. GRAHAM	:	DECISION
For a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the years 1961, 1965 and 1966.	:	

The taxpayers having filed a petition pursuant to section 689 of the Tax Law for refund of personal income tax imposed for the year 1961 and for a redetermination of deficiencies in personal income tax asserted for the years 1965 and 1966 and a hearing thereon having been held before Nigel G. Wright, Hearing Officer, on December 13, 1970, and the record having been duly examined and considered,

The State Tax Commission hereby,

FINDS:

1. The issues are:

(A) The proper computation of the time that taxpayer, a nonresident, spent in New York during the taxable years 1965 and 1966 and;

(B) The proper application of the net operating loss provisions of Tax Law sections 622(c) and 632(b)(3) and Regulation 20 NYCRR 131.13(a) and 131.6(c) where the taxpayer reports on a separate accounting basis.

2. The refund demand for 1961 is in the amount of \$2,221.66 and the deficiencies are in the amount of \$13,803.99 for 1965 and \$28,365.71 for 1966 each with interest.

3. Taxpayers are residents of the State of Washington.

The principal sources of income are from the profits of an architectural business carried on in Seattle, and New York City, salary from a partnership--Graham, Kahn & Jacobs whose activities are entirely in the State of New York, and income from another partnership whose activities are entirely outside the State of New York.

4. Taxpayers have always reported the income of the architectural business to New York on a separate accounting basis.

5. Taxpayer received a salary from John Graham & Co., a drafting and engineering company, of New York and Seattle of \$62,307.90 in 1965 and \$66,323.10 in 1966. For 1965, his return allocates on the basis of 78 days in New York out of a total of 275 days in the year. For 1966, his return allocates on the basis of 78 days in New York out of 291 days in the year. At least on some of the days worked outside of New York, the taxpayer must have worked in his other two businesses. In 1968, the Bureau requested the taxpayer to allocate his salary on an hourly instead of a daily basis. The taxpayer has no records on a hourly basis.

6. The taxpayer's architectural business was operated at a profit for each year from 1959 to 1966 so far as its national operations were concerned and taxpayers Federal returns showed no losses. His operations in New York had previously shown a profit in 1959, a loss in 1960, a profit in 1961, losses in 1962, 1963, 1964 and a profit in 1965 and 1966.

7. The taxpayer has computed separately a 1962 loss which he applies to 1961 income to eliminate completely that income and give use to the refund claimed for that year. Furthermore, the excess of that loss plus losses computed for 1963 and 1964 are carried over to eliminate all taxable income in 1965 and 1966.

Such New York taxable income was \$105,082.09 for 1965 and \$241,761.28 for 1966.

8. The income from taxpayer's architectural business was \$292,488.89 in 1965 and this was reported on his Federal return. On his New York return, he allocated \$50,451.82 to New York. In 1966, his income was \$75,675.83 and this was reported on his Federal return. On his New York return, he reported an income of \$163,015.68. The lower Federal figure is due to large losses having occurred outside the State.

Upon the foregoing findings and all the evidence in the case
The State Tax Commission hereby,

DECIDES:

A. The allocation of taxpayer's salary from one of his businesses on a daily basis was in accordance with the regulations. While an hourly allocation is more accurate than a daily allocation (especially when the taxpayer was apparently working each day in three separate businesses) and the request for hourly records is reasonable for tax years subsequent to such request. Still the request was not made before the tax years here in question and such a request would be unreasonable if applied retroactively.


B. The net operating loss deductions cannot be allowed. Under Tax Law section 632(a)(1) New York adjusted gross income is the net amount of the "items" of income, gain, loss and deductions entering into Federal adjusted gross income. The Federal adjusted gross income of this taxpayer did not contain at any time any item specified as a net operating loss deduction. The regulations, 20 NYCRR 131.6 accordingly deny a deduction on the New York return. The ruling of the State Tax Commission dated July 21, 1965 (1965-3 New York State Tax Bulletin page 6) with respect to analogous problems under the corporate Franchise Tax relies on the work

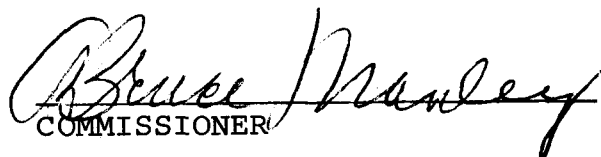
"presumably" appearing in both sections 208-9 and 208-9(f) of the Tax Law. Such language does not occur in Article 22 of the Tax Law with respect to personal income taxes.

C. The petition for a refund for 1961 taxes is denied. The petition with respect to the deficiencies for 1965 and 1966 is granted and such deficiencies are recomputed to be \$9,843.21 for 1965 and \$23,511.13 for 1966 and as recomputed are affirmed together with such interest, if any, as may be due under the Tax Law.

DATED: Albany, New York
March 17, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER