

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK B. & GLADYS MANCHEE

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, 1964  
and 1965

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

State of New York  
County of Albany

Lynn Wilson, 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 4th day of May, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon FREDERICK B. & GLADYS MANCHEE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frederick B. & Gladys Manchee  
144 South Maple Avenue  
Ridgewood, New Jersey  
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

4th day of May, 1972

Kal J. J. J.

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
FREDERICK B. & GLADYS MANCHEE :  
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For a Redetermination of a Deficiency or :  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the :  
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State of New York  
County of Albany

Lynn Wilson , 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 4th day of May , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon ALBERT M.  
GOLDSTEIN, ESQ. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Albert M. Goldstein, Esq.  
4 East 43rd Street  
New York, New York  
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

4th day of May , 1972.

Rae Zimmerman

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**May 4, 1972**

**Frederick B. & Gladys Manchee**  
**144 South Maple Avenue**  
**Ridgewood, New Jersey**

**Dear Sir and Madam:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**690** of 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 relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**L. Robert Leisner**  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FREDERICK B. & GLADYS MANCHEE : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Years 1963, 1964 and 1965. :  
:

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The taxpayers petitioned for a redetermination of deficiency in personal income taxes under Article 22 of the Tax Law for the years 1963, 1964 and 1965.

The case was submitted on the information in the file. The taxpayers were represented by Albert M. Goldstein, C.P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was income paid to the nonresident taxpayers during the years in issue qualified annuity or income from services under 20 NYCRR 131.4?

FINDINGS OF FACT

1. Petitioners timely filed New York State income tax returns for the years 1963, 1964 and 1965.
2. A notice of determination of deficiencies in personal income taxes for the years 1963, 1964 and 1965 was issued on April 10, 1967, against the taxpayers under File No. 33219614.
3. The taxpayers petitioned for redetermination of the deficiencies.
4. The petitioner, Frederick B. Manchee, received money

from Batten, Barton, Durstine and Osborn, Inc. under an agreement entitled:

"Terms and Conditions relating to compensation for refraining from engaging in activities competitive with the company and for making consultative and advisory services available to the company after employment."

5. The agreement provided:

"The compensation shall be "a sum to (a) one year's salary, or (b) the participation in respect of the company's net profits for the calendar year immediately preceding the scheduled date of payment whichever is less,

6. Compensation was dependent on the taxpayer, Frederick B. Manchee, refraining from competitive activities after severance of employment and also on the participant's availability for advisory and consultative services after severance of employment.

7. The petitioner asserted that he was a nonresident and the money from Batten, Barton, Durstine and Osborn, Inc. was a pension or other retirement annuity constituting an annuity which was not taxable under 20 NYCRR 131.4.

CONCLUSIONS OF LAW

A. The agreement for compensation, coming from profits of the company, and paying for refraining from competition and being available as an advisor was not an annuity under 20 NYCRR 131.4.

B. The petition is denied. The determination of the deficiency is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York  
*May 4, 1972,*

STATE TAX COMMISSION

*Stephen J. Gallivan*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Korman*  
\_\_\_\_\_  
COMMISSIONER