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STATE OF NEW YORK STATE TAX COMMISSION

In the Matter of the Petition

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX
OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND AFFIDAVIT OF MAILING
NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR

BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959.

State of New York County of Albany

Rae Zimmerman , 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 24th day of February , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Gladys W. Perry (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mrs. Gladys W. Perry
Ski Trail- Smoke Rise

Butler, 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

24th day of February , 1972

martha turnes

Kal Jemmesman

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECTRIX OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND OF NOTICE OF DECISION NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959.

State of New York County of Albany

Rae Zimmerman, 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 24th day of February , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon John M. Delaney, C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: John M. Delaney, C.P.A.

c/o Wiley, Block & White, C.P.A.'s

52 Church Street

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

24th day of February , 1972.

witha Funais

Har Jumennan

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX
OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND AFFIDAVIT OF MAILING
NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

State of New York County of Albany

Rae Zimmerman , 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 24th day of February , 19⁷², she served the within Notice of Decision (or Determination) by (certified) mail upon New Jersey Bank & Trust Co. Co-Executor (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: New Jersey Bank & Trust Co., Co-Executor 129 Market Street Paterson, 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

24thday of February , 1972

Kal Jammenna



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

Albany, New York

February 24, 1972

HEARING UNIT

STATE TAX COMMISSION

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

Mrs. Gladys W. Parry Ski Trail - Smoke Rise Butler, New Jersey

Donr Hadam

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

of

Please take further notice that pursuant to getten 375 of the Tax Law any proceeding in court to review an adverse decision must be commenced within 40 days 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,

Zavrando A. Bonna

HEARING OFFICER

cc Petitioner's Representative Law Bureau STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR

DETERMINATION

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1959.

A hearing was held in the above matter at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Solomon Sies, Hearing Officer, at which hearing the taxpayers were represented by Wiley, Block and White, Certified Public Accountants by John M. Delaney, CPA. The matter was then adjourned sine die to permit Gladys W. Perry to appear and testify on or about August 11, 1970. The New Jersey Bank submitted an affidavit of Gladys W. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) On July 2, 1963 Raymond S. Perry and Gladys W. Perry filed a delinquent New York State income tax return for the year 1959 on which they reported total income in the amount of \$34,477.30. They deducted both standard deduction of \$1,000 and itemized deductions of \$7,787.02. They reported a taxable income of \$22,690.28, indicated net total tax due of \$1,604.03, New York tax withheld \$1,892.00 and claimed a refund of \$287.97. Raymond S. Perry died on July 16, 1964, a resident of the State of New Jersey. On July 28, 1964 the last will and testament of Raymond S. Perry

was admitted to probate by Morris County Surrogate's Court,
Morristown, New Jersey and letters testamentary were issued to
Gladys W. Perry and the New Jersey Bank and Trust Company, as
executors.

- Bank and Trust Co., as Executors of the Estate of Raymond S. Perry, filed an amended nonresident return for the year 1959 in which the compensation of the decedent taxpayer, Raymond S. Perry, was reported as \$32,966.62. It was claimed that the earnings stated above included compensation for services rendered outside the State of New York in the amount of \$8,106.54 so that the income attributable to New York sources amounted to \$24,860.08. Deductions were claimed in the amount of \$1,346.00. A refund was claimed on said amended return in the amount of \$505.59 based upon an allocation of income attributable to sources outside the State.
- (3) On April 21, 1966 the Department of Taxation and Finance mailed to Gladys W. Perry, individually and as co-executrix of the Estate of Raymond S. Perry, a notice of denial of the 1959 claim for refund which stated in part that "this decision is final and cannot be reviewed unless a demand for a hearing is filed with the Tax Commission on Form IT-114 within ninety (90) days from the date of the mailing of this letter."
- (4) No demand for a hearing was filed within ninety days after the date of such mailing of the letter of denial on April 21, 1966.

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

DETERMINES:

(A) Gladys W. Perry, individually and as co-executrix of the Estate of Raymond S. Perry, deceased, failed to file a demand for hearing within ninety days from April 21, 1966, the

date of the mailing of the letter of denial of the claim for refund for 1959, pursuant to the provisions of section 374 of the Tax Law, then in effect.

(B) Accordingly, the application for revision or refund filed with respect to the year 1959 be and the same is hereby dismissed.

Dated: Albany, New York this 24th day of February, 1972.

STATE TAX COMMISSION



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 HEARING UNIT

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

hetder for

Albany, New York February 24, 1972

Mrs. Gladys W. Perry Ski Trail - Smoke Rise Butler, New Jersey

Dear Madam:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 375 of the Tax Law any proceeding in court to review an adverse decision must be commenced within 90 days 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,

Lawrence A. Newman

awrences Marraen

HEARING OFFICER

cc Petitioner's Representative Law Bureau IN THE NATTER OF THE APPLICATION

GLANTS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE REPARE OF RAYMOND S. PERRY, DECRASED AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR

POR REVISION OR REPUMD OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW POR THE YEAR 1959.

DETERMINATION

A hearing was held in the above matter at the effice of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Selemen Sice, Hearing Officer, at which hearing the tempeyers were represented by Wiley, Block and White, Certified Public Accountants by John M. Delaney, GPA. The matter was them adjourned sine die to permit Gladys W. Perry to appear and testify on or about August 11, 1970. The New Jersey Bank submitted an affidavit of Gladys W. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) On July 2, 1963 Raymond S. Perry and Cladys W. Perry filed a delinquent New York State income tax return for the year 1959 on which they reported total income in the anomal of \$34,477.30. They deducted both standard deduction of \$1,600 and itemized deductions of \$7,787.02. They reported a taxable income of \$22,690.28, indicated not total tax due of \$1,604.03, New York tax withhold \$1,892.00 and elained a refund of \$287.97. Repeated S. Perry died on July 16, 1964, a resident of the State of New Jersey. On July 28, 1964 the last will and testament of Repeated S. Perry

was admitted to probate by Morris County Surregate's Court,
Morristown, New Jersey and letters testamentary were issued to
Cladys V. Perry and the New Jersey Bank and Trust Company, as
executors.

- (2) On June 15, 1965 Cladys W. Perry and How Jersey
 Bank and Trust Co., as Rescuters of the Estate of Raymond S. Perry,
 filed an amended nonresident return for the year 1959 in which the
 compensation of the decedent tampayer, Raymond S. Perry, was
 reported as \$32,966,62. It was claimed that the earnings stated
 shows included compensation for services rendered outside the
 State of New York in the amount of \$8,106.54 so that the income
 attributable to New York sources amounted to \$24,860.06. Reductions
 were claimed in the amount of \$1,346.00. A refund was claimed on
 said amended return in the amount of \$505.59 based upon an
 allocation of income attributable to sources outside the State,
- (3) On April 21, 1966 the Department of Taxation and Finance mailed to Gladys V. Perry, individually and as co-executyix of the Estate of Raymond S. Perry, a notice of denial of the 1959 claim for refund which stated in part that "this decision is final and cannot be reviewed unless a demand for a hearing is filed with the Tax Commission on Perm IT-11A within minety (90) days from the date of the mailing of this letter."
- (4) He demand for a hearing was filed within minety days after the date of such mailing of the letter of demial on April 21, 1966.

Based on the foregoing findings and all of the evidence presented herein, the State Tax Coumission hereby

DEFENCIONS:

(A) Cladys W, Perry individually and as co-executriz, of the Estate of Raymond S. Perry, deceased, failed to file a demand for hearing within misety days from April 21, 1966, the

date of the mailing of the letter of denial of the claim for refund for 1959, pursuant to the provisions of section 37% of the Tax Law, then in effect.

(B) Accordingly, the application for revision or refund filed with respect to the year 1959 be and the same is hereby dismissed.

Deted: Albert, New York this 24th day of February , 1972.

STATE TAX COMMISSION

Woman Gallman

Abruse Manley Milton Kum

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX
OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND
NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR
:
BY (CERTIFIED) MAIL

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) 1960, 1961 and 1962.

State of New York County of Albany

Rae Zimmerman 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 24th day of February , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Gladys W. Perry (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Gladys W. Perry
Ski Trail - Smoke Rise
Butler, 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

Lunda Welson

24th day of February , 1972.

Pal Jummenna

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX AFFIDAVIT OF MAILING OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND OF NOTICE OF DECISION NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR BY (CERTIFIED) MAIL

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)1960, 1961 and 1962.

State of New York County of Albany

Rae Zimmerman , 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 24thday of February, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon John M. Delaney, C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John M. Delaney, C.P.A.

c/o Wiley, Block & White, C.P.A.'s

52 Church Street

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

24th day of February , 1972.

inda Wilson

Plat Jemmennan

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX AFFIDAVIT OF MAILING OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND OF NOTICE OF DECISION NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR BY (CERTIFIED) MAIL

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) 1960, 1961 and 1962.

State of New York County of Albany

Rae Zimmerman , 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 24th day of February , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon New Jersey Bank & Trust Co., Co-Executor (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: New Jersey Bank & Trust Co.

Co-Executor 129 Market Street

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

24thday of February , 1972.

inda Wilson

Rae Jammesman



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518 457-2655, 6, 7 STATE TAX COMMISSION HEARING UNIT

> EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

Albany, New York

Penguany 24, 1972

Mrs. Gladys W. Persy Ski Trail - Smoke Rise Datler, New Jersey

Dear Mrs. Persys

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

of

Please take further notice that pursuant to the Tax Law any proceeding in court to review an adverse decision must be commenced within 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,

Jag .

HEARING OFFICER

cc Petitioner's Representative Law Bureau STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR FOR REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEARS 1960, 1961 AND 1962.

DECISION

A hearing was held in the above matter at the Office of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Solomon Sies, Hearing Officer, at which hearing the taxpayers were represented by Wiley, Block and White, Certified Public Accountants by John M. Delaney, CPA. The matter was then adjourned sine die for the purpose of permitting Gladys W. Perry to appear and testify. On or about August 11, 1970 the New Jersey Bank submitted an affidavit of Gladys W. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) On July 2, 1963 Raymond S. Perry and Gladys W. Perry, his wife, filed delinquent New York State income tax returns for the years 1960, 1961 and 1962. They deducted both standard deduction of \$1,000 and itemized deductions for each of the aforementioned years. They indicated New York tax withheld on salary income of Raymond S. Perry and claimed refunds or overpayments for each of the aforementioned years. Raymond S. Perry died on July 16, 1964, a resident of the State of New Jersey. On July 28, 1964 the last will and testament of Raymond S. Perry was admitted

to probate by the Morris County Surrogate's Court, Morristown,
New Jersey and letters testamentary were issued to Gladys W. Perry
and the New Jersey Bank and Trust Co. as executors.

- (2) On June 15, 1965 the Executors of the Estate of Raymond S. Perry filed amended New York State income tax non-resident returns for the years 1960, 1961 and 1962 and claimed refunds due in the amounts of \$93.35, \$370.46 and \$677.10 for the years 1960, 1961 and 1962 respectively. The amended returns upon which claims for refund were made were based upon the contention that the decedent, Raymond S. Perry, was entitled to an allocation of earnings for services rendered as an employee outside the State of New York. The above mentioned claims for refund were denied by the Department of Taxation and Finance. It is to be noted that no claim for allocation of earnings was made on the original delinquent returns filed by the decedent, Raymond S. Perry.
- (3) During the years in issue, Raymond S. Perry and Gladys W. Perry, his wife, were domiciliaries of the State of New Jersey. On January 12, 1960, Raymond S. Perry entered into an agreement of lease for an apartment located at 1175 York Avenue in the City and State of New York for a term of three years to commence on May 1, 1960 and to terminate on April 1, 1963 at an annual rental of \$6,000. Pursuant to the aforementioned agreement of lease, Raymond S. Perry and Gladys W. Perry occupied said apartment from May 1, 1960 until March 24, 1961. The lease of the aforementioned apartment was cancelled and the apartment was surrendered by Mr. and Mrs. Perry on or about March 24, 1961. The taxpayers failed to present sufficient evidence to warrant a finding that they spent less than 183 days during 1960 within New York State. Information submitted indicates that the decedent performed services for Boyden Associates, Inc., within the State of New York in 1960 for at least 193 days. During the year 1960,

Raymond S. Perry and Gladys W. Perry, his wife, maintained a permanent place of abode and spent more than 183 days within the State of New York.

- (4) After March 24, 1961 Mr. and Mrs. Perry ceased to maintain a permanent place of abode within the State of New York.
- (5) The taxpayers failed to establish that the amount of \$1,923.55 received from International Telephone and Telegraph Co., 320 Park Avenue, New York City, designated as wages on Federal withholding tax statement for 1961 did not constitute income attributable to New York sources.
- (6) The petitioners have failed to establish that the decedent, Raymond S. Perry, was required to and actually did perform services outside the State of New York with respect to the compensation received by him from Boyden Associates, Inc., 260 Madison Avenue, New York, New York, during the years in issue.

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

DECIDES:

- (A) The taxpayers, Raymond S. Perry and Gladys W. Perry, his wife, were statutory residents for income tax purposes during the year 1960 in accordance with the provisions of section 605 of the Tax Law and their total income for the year 1960 was subject to tax as residents of the State of New York. The taxpayers were nonresidents for income tax purposes for the years after 1960. The claim for refund for 1960 is therefore denied.
- (B) The amended returns filed for the years 1960 and 1961 are deemed to constitute applications for refund based upon an alleged allocation of earnings attributable to sources outside the State of New York. The taxes withheld from the compensation received by Raymond S. Perry from Boyden Associates, Inc., during

the years 1960 and 1961 are deemed to have been paid on April 15, 1961 and April 15, 1962 respectively. The claims for refund for the years 1960 and 1961 were not filed within three years from the date the taxes were paid for such years in accordance with the provisions of section 687(a) of the Tax Law.

- amended after the expiration of the statutory period for filing refund claims so as to include a new and entirely unrelated claim. (U.S. v. Andrews, 302 U.S. 517, 82 L. ed. 398; U.S. v. Garbutt Oil Co., 302 U.S. 528, 82 L. ed. 405.)
- (D) In accordance with paragraphs (B) and (C) above the claims for refund for 1960 and 1961 are hereby dismissed.
- (E) The petitioners have failed to establish that during the years in issue the decedent, Raymond S. Perry was entitled to an allocation of earnings both within and without the State of New York. The income derived by him for services rendered to Boyden Associates, Inc., during the years in issue was attributable to sources within the State of New York in accordance with the provisions of section 632(c) of the Tax Law. The claim for refund on the amended return for 1962 is therefore denied.

Dated: Albany, New York the 24th day of Fabruary, 1972.

STATE TAX COMMISSION

Norman Selling

PRESIDENT

COMMISSIONER

COMMISSIONER



STATE TAX COMMISSION

A. BRUCE MANLEY MILTON KOERNER

NORMAN'F. GALLMAN, ACTING PRESIDENT

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518 457-2655, 6, 7 STATE TAX COMMISSION HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York February 24, 1972

Mrs. Gladys W. Perry Ski Trail - Smoke Rise Butler, New Jersey

Dear Mrs. Perry:

Please take notice of the Decision the State Tax Commission enclosed herewith.

of

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 four 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,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

IN THE MATTER OF THE PETITION

GLADES V. PERTY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PHINT, DECRASED AND HEW JERREY BANK AND TRUST CO., CO-EXECUTOR FOR REPURD OF PERSONAL INCOME TAXES WHEN ARTICLE 22 OF THE TAX LAW FOR THE TRANS 1960, 1961 AND 1962.

DREISION

A hearing was held in the above matter at the Office of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Solemon Sies, Searing Officer, at which hearing the taxpayers were represented by Wiley, Block and White, Certified Public Accountants by John M. Delaney, GPA. The matter was then adjourned sine die for the purpose of permitting Sladys V. Perry to appear and testify. On or about August 11, 1970 the New Jersey Bank submitted an affidavit of Gladys V. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) On July 2, 1963 Reymond S. Perry and Cladys W. Perry, his wife, filed delinquent New York State income tax returns for the years 1960, 1961 and 1962. They deducted both standard deduction of \$1,000 and itemized deductions for each of the aforementioned years. They indicated New York tax withheld on salary income of Raymond S. Perry and claimed refunds or everyagements for each of the aforementioned years. Raymond S. Perry died on July 16, 1964, a resident of the State of New Jersey. On July 28, 1964 the last will and testament of Raymond S. Perry was admitted

to probate by the Morris County Surrogate's Court, Morristons, New Jersey and letters testamentary were issued to Cladys V. Perry and the New Jersey Bank and Trust Co. as executors.

- Reguest S. Perry filed emended New York State income tex measuresident returns for the years 1960, 1961 and 1962 and claimed refunds due in the emounts of \$93,35, \$370.46 and \$677.10 for the years 1960, 1961 and 1962 respectively. The emended returns upon which claims for refund were made were based upon the contention that the decedent, Reymond S. Perry, was entitled to an allocation of earnings for services rendered as an employee outside the State of New York. The above mentioned claims for refund were decide by the Department of Taxation and Finance. It is to be noted that no claim for allocation of earnings was made on the original delinquent returns filed by the decedent, Reymond S. Perry.
- (3) During the years in issue, Raymond S. Perry and Gladys W. Perry, his wife, were demiciliaries of the State of How Jersey. On January 12, 1960, Raymond S. Perry entered into an agreement of lease for an spartment located at 1175 York Avenue in the City and State of New York for a term of three years to commence on May 1, 1960 and to terminate on April 1, 1963 at am annual rental of \$6,000. Pursuant to the aferementioned agreement of lease, Raymond S. Perry and Gladys W. Perry occupied said spartment from May 1, 1960 until March 24, 1961. The lease of the aforementioned spartment was cancelled and the spartment was surrendered by Mr. and Mrs. Perry on or about March 24, 1961. The tempeyers failed to present sufficient evidence to warrant a finding that they spent less than 183 days during 1960 within How York State. Information submitted indicates that the decedent performed services for Boyden Associates, Inc., within the State of New York in 1960 for at least 193 days. During the year 1960,

Raymond S. Perry and Gladys W. Perry, his wife, maintained a permanent place of abode and spent more than 183 days within the State of New York.

- (4) After March 24, 1961 Mr. and Mrs. Persy coased to maintain a permanent place of abode within the State of New York.
- (5) The tempsyore failed to establish that the amount of \$1,923.55 received from International Talephone and Talegraph Go., 320 Park Avenue, New York City, designated as wages on Federal withholding tem statement for 1961 did not constitute income attributable to New York sources.
- (6) The petitioners have failed to establish that the decedent, Reymond S. Perry, was required to and actually did perform services outside the State of New York with respect to the compensation received by him from Boyden Associates, Inc., 260 Medison Avenue, New York, New York, during the years in issue.

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

POSTOCK :

- (A) The texpeyers, Reymond S. Perry and Cladys V. Perry, his wife, were statutery residents for income tax purposes during the year 1960 in accordance with the provisions of section 605 of the Tax Low and their total income for the year 1960 was subject to tax as residents of the State of New York. The texpeyers were nonresidents for income tax purposes for the years after 1960. The claim for refund for 1960 is therefore denied.
- (B) The amended returns filed for the years 1960 and 1961 are deemed to constitute applications for refund based upon an alleged allocation of enumings attributable to sources cutcide the State of New York. The taxes withheld from the compensation received by Raymond S. Perry from Boyden Associates, Inc., during

the years 1960 and 1961 are deemed to have been paid on April 15, 1961 and April 15, 1962 respectively. The claims for refund for the years 1960 and 1961 were not filed within three years from the date the taxes were paid for such years in accordance with the previsions of section 687(a) of the Tax Law.

- (C) A claim for refund of income taxes cannot be amended after the empiration of the statutory period for filing refund claims so as to include a new and entirely unrelated claim. (V.S. Y. Andrews, 302 V.S. 517, &z L. ed. 398; V.S. Y. Garbutt Cil Co., 302 V.S. 528, &z L. ed. 405.)
- (D) In accordance with paragraphs (B) and (C) above the claims for refund for 1960 and 1961 are hereby dismissed.
- (I) The petitioners have failed to establish that during the years in issue the decedent, Repeated 8. Perry was entitled to an allocation of carnings both within and without the State of New York. The income derived by him for services rendered to Reyden Associates, Inc., during the years in issue was attributable to sources within the State of New York in accordance with the provisions of section 632(c) of the Tax Law. The claim for refund on the amended return for 1962 is therefore denied.

Detects Alberry, New York the 24th day of February, 1972.

MEATE TAX CONCESSION

Morran Galleran

Muce Manley

Motor Krem

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX
OF THE ESTATE OF RAYMOND S. PERRY AND NEW JERSEY OF NOTICE OF DECISION
BANK AND TRUST CO., CO-EXECUTOR : BY (CERTIFIED) MAIL

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.

State of New York County of Albany

Rae Zimmerman , 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 24th day of February , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Gladys W. Perry (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Gladys W. Perry

Ski Trail - Smoke Rise Butler, 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

24th day of February , 1972.

Rae Jimmerman

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PERRY AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR

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

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

State of New York County of Albany

Rae Zimmerman , 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 24th day of February , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon John M. Delaney, C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid John M. Delaney, C.P.A. wrapper addressed as follows:

c/o Wiley, Block & White, C.P.A.'s

52 Church Street

Paterson, 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

24th day of February , 1972.

inda Welson

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX AFFIDAVIT OF MAILING OF THE ESTATE OF RAYMOND S. PERRY AND NEW JERSEY OF NOTICE OF DECISION BANK AND TRUST CO., CO-EXECUTOR : BY (CERTIFIED) MAIL

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.

State of New York County of Albany

Rae Zimmerman , 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 24thday of February , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon New Jersey Bank & Trust Co., Co-Executor (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: New Jersey Bank & Trust Co.

Co-Executor
129 Market Street

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

24th day of February , 1972.

Cal Brissenna



STATE TAX COMMISSION

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

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

Albany, New York

February 24, 1972

Mrs. Gladys W. Socry Ski frail - Smuke Rise Batler, New Jersey

Dear Mrs. Perry

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

of

Please take further notice that pursuant to the Tax Law any proceeding in court to review an adverse decision must be commenced within 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,

Lawrence A. Monana

HEARING OFFICER

cc Petitioner's Representative Law Bureau STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR

DECISION

FOR REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1963

A hearing was held in the above matter at the Office of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Solomon Sies, Hearing Officer, at which hearing the taxpayers were represented by Wiley, Block and White, Certified Public Accountants by John M. Delaney, CPA. The matter was then adjourned sine die for the purpose of permitting Gladys W. Perry to appear and testify. On or about August 11, 1970 the New Jersey Bank submitted an affidavit of Gladys W. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) Raymond S. Perry and Gladys W. Perry, his wife, filed a New York State income tax nonresident return for the year 1963 in which they reported gross Federal income in the amount of \$46,782.56 and New York income in the amount of \$44,451.08. They reported New York taxable income in the amount of \$33,013.20 and reported New York tax due of \$2,636.30. No claim for an allocation of income attributable to sources outside the State of New York was made on said return.

- (2) On June 15, 1965 the executors of the estate of Raymond S. Perry filed an amended New York State income tax nonresident return for the year 1963 in which they claimed New York tax due in the amount of \$1,780.73 and claimed an overpayment of \$855.57. On August 18, 1965 the executor filed a claim for refund on Form IT-113X for the year 1963 in the amount previously mentioned on the amended return. The claim for refund is based upon an allocation of earnings partly within and partly without the State of New York. The claim for refund was denied and the petitioners filed a timely petition for refund for 1963.
- (3) During the year 1963 the decedent, Raymond S. Perry, was employed by Boyden Associates Inc., 260 Madison Avenue, New York, New York as a management consultant. During the aforementioned year Mr. Perry was a nonresident of the State of New York residing at Ski Trail Smoke Rise, Butler, New Jersey. The total compensation received by the decedent, Raymond S. Perry, from Boyden Associates Inc., during the year 1963, was \$40,550.
- (4) The petitioners have failed to establish that during the year 1963 the decedent, Raymond S. Perry, was required to and actually did perform services outside the State of New York with respect to the compensation received from Boyden Associates Inc.

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

DECIDES:

(A) The petitioners have failed to establish that during the year 1963 the decedent, Raymond S. Perry, was entitled to an allocation of earnings both within and without the State of New York. The income derived by him for services rendered to Boyden Associates Inc. during the year 1963 was attributable to sources within the State of New York in accordance with the provisions of section 632(c) of the Tax Law.

(B) Accordingly, the claim for refund for 1963 based upon an alleged claim of allocation of income attributable to sources outside the State of New York be and the same is hereby denied.

Dated: Albany, New York this 24th day of February , 1972

STATE TAX COMMISSION

PRESTDENT

Milton Kven



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 HEARING UNIT

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

Albany, New York

February 24, 1972

Mrs. Gladys W. Perry Ski Trail - Smoke Rise Butler, New Jersey

Dear Mrs. Perry:

Please take notice of the Decision the State Tax Commission enclosed herewith.

of

Please take further notice that pursuant to section 690 of the Tax Law any proceeding in court to review an adverse decision must be commenced within four 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,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative Law Bureau

STATE OF THE YORK

STATE TAX GOODIESTON

IN THE MATTER OF THE PHYLYTON

GLANCS V. PERRY, INDIVIDUALLY AND AS CO-EXECUTAIN OF THE REPARE OF RAYMOND S. PRINT, INCRASED AND HEN JERSEY BANK AND TRUST CO., CO-EXHOUTOR

FOR REDUPERMINATION OF A DEFICIENCY OR FOR REPUBLIC OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE TEAR 1963

BECISION

A hearing was held in the above matter at the Office of the State Tax Commission at 80 Centre Street, New York, New York on the 30th day of September, 1968 before Solamon Sice, Mearing Officer, at which hearing the taxpayers were represented by Wiley, Block and White, Certified Public Accountants by John M. Belancy, GPA. The matter was them adjourned sine die for the purpose of permitting Glodys W. Perry to appear and testify. On or about August 11, 1970 the New Jersey Bank submitted an affidevit of Glodys W. Perry in lieu of her appearance and requested that the matter be considered on the record as presently constituted.

The matter having been duly considered, the State Tax Commission hereby finds:

(1) Raymond S. Perry and Sladys W. Perry, his wife, filed a New York State income tax nonresident return for the year 1963 in which they reported gross Pederal income in the amount of \$46,782.56 and New York income in the amount of \$45,451.08, They reported New York taxable income in the amount of \$33,013.20 and reported New York tax due of \$2,636.30, No claim for an allocation of income attributable to sources outside the State of New York was made on each return.

- (2) On June 15, 1965 the executors of the estate of Raymond 8. Perry filed an amended New York State income tax nonresident return for the year 1963 in which they claimed New York tax due in the amount of \$1,780.73 and claimed an everyogenest of \$855.57. On August 18, 1965 the executor filed a claim for refund on Form IT-115K for the year 1963 in the amount previously mentioned on the amended return. The claim for refund is based upon an allocation of carnings partly within and partly without the State of New York. The claim for refund was demied and the petitioners filed a timely petition for refund for 1963.
- (3) During the year 1963 the decedent, Raymond S. Perry, was employed by Boyden Associates Inc., 260 Medison Avenue, New York, New York as a management consultant, During the eforementioned year Mr. Perry was a nonresident of the State of New York residing at Ski Trail Smoke Rise, Butler, New Jersey. The total compensation received by the decedent, Raymond S. Perry, from Boyden Associates Inc., during the year 1963, was \$40,550.
- (4) The petitioners have failed to establish that during the year 1963 the decedent, Raymond S. Ferry, was required to and actually did perform services outside the State of New York with respect to the compensation received from Doydon Associates Inc.

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

DECIDES:

(A) The potitioners have failed to establish that during the year 1963 the decedent, Raymond S. Perry, was entitled to an allocation of earnings both within and without the State of New York. The income derived by him for services rendered to Baydon Associates Inc., during the year 1963 was attributable to sources within the State of New York in accordance with the provisions of section 632(c) of the Tax Law.

(3) Accordingly, the claim for refund for 1963 based upon an alleged claim of allegation of income attributable to sources outside the State of New York be and the same is hereby denied.

Deted: Alberry, New York this 24thday of February , 1972

STATE TAX CONCURSION

hormen Gellinson

Bruse Manley

Milton Kven