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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

GLADYS W. PERRY, <sup>of</sup> INDIVIDUALLY AND AS CO-EXECUTRIX  
OF THE ESTATE OF RAYMOND S. PERRY, DECEASED 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) 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 Funes

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

GLADYS W. PERRY, <sup>of</sup> INDIVIDUALLY AND AS CO-EXECUTRIX  
OF THE ESTATE OF RAYMOND S. PERRY, DECEASED AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR  
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For a Redetermination of a Deficiency or  
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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  
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.

Martha Furness

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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

For a Redetermination of a Deficiency or  
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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

24th day of February, 1972

Maitha Funes

Rae Zimmerman



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

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

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 28, 1972**

**Mrs. Gladys W. Perry  
Ski Trail - Snake 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 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

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 : D E T E R M I N A T I O N  
JERSEY BANK AND TRUST CO., CO-EXECUTOR :  
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.

(2) On June 15, 1965 Gladys W. Perry and New Jersey 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

*Norman Gallman*  
\_\_\_\_\_  
PRESIDENT

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

*Milton Kren*  
\_\_\_\_\_  
COMMISSIONER





STATE OF NEW YORK  
 DEPARTMENT OF TAXATION AND FINANCE  
 BUILDING 9, ROOM 214A  
 STATE CAMPUS  
 ALBANY, N. Y. 12226

STATE TAX COMMISSION  
 HEARING UNIT  
 EDWARD ROOK  
 SECRETARY TO  
 COMMISSION

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

AREA CODE 518  
 457-2655, 6, 7

ADDRESS YOUR REPLY TO

Albany, New York  
 February 24, 1972

*Ret'd by [unclear]  
 Head of [unclear]*

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 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

**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** : **D E T E R M I N A T I O N**  
**JERSEY BANK AND TRUST CO., CO-EXECUTOR** :  
**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 Sien, 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.

(2) On June 15, 1965 Gladys W. Perry and New Jersey 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 \$505.99 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

**DEFICIENCIES:**

(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 24<sup>th</sup> day of February, 1971.

**STATE TAX COMMISSION**

Norman Gallman  
PRESIDENT

Bruce Manley  
COMMISSIONER

Milton Korman  
COMMISSIONER

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 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 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

24th day of February, 1972.

Linda Wilson

Rae Zimmerman

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  
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 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 John M. Delaney, C.P.A.

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c/o Wiley, Block & White, C.P.A.'s  
52 Church Street  
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Sworn to before me this

24th day of February, 1972.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

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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  
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Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1960, 1961 and; 1962.

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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.

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Sworn to before me this

24th day of February, 1972.

Linda Wilson

Rae Zimmerman



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

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

Albany, New York  
**February 24, 1972**

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

**Dear Mrs. Perry:**

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 **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 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



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.

(C) A claim for refund of income taxes cannot be 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 24<sup>th</sup> day of February, 1972

STATE TAX COMMISSION

Norman J. Gellman  
PRESIDENT

Bruce Maxley  
COMMISSIONER

William K. Korman  
COMMISSIONER



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

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

AREA CODE 518  
457-2655, 6, 7

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** 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 **four months** after  
the date of this notice.

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in accordance with this decision or concerning any other matter relat-  
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to the proper party for reply.

Very truly yours,

Lawrence A. Newman  
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** :

**GLADYS W. PERRY, INDIVIDUALLY AND AS** :  
**CO-EXECUTOR 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.** :

**D E C I S I O N**

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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 Sles, Hearing Officer, at which hearing the taxpayers were represented by Wiley, Black 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., 380 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 603 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.

(C) A claim for refund of income taxes cannot be 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. 928, 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 24<sup>th</sup> day of February, 1972.

STATE TAX COMMISSION

Raymond Gallivan

CHAIRMAN

Bruce Manley

COMMISSIONER

William Koehn

COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

GLADYS W. PERRY, INDIVIDUALLY AND AS CO-EXECUTRIX OF THE ESTATE OF RAYMOND S. PERRY AND NEW JERSEY BANK AND TRUST CO., CO-EXECUTOR :  
of :  
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 of the :  
Tax Law for the (Year(s) 1963. :

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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.

Linda Wilson

Rae Zimmerman

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 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 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 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  
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.

Linda Wilson

Rae Zimmerman

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 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 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 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

24th day of February, 1972.

Linda Wilson

Rae Zimmerman



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

**February 24, 1972**

**Mrs. Gladys W. Perry  
Ski Trail - Snow Rise  
Nutley, New Jersey**

**Dear Mrs. Perry:**

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

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 relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Lawrence A. Brown**

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 :

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 :

D E C I S I O N

FOR 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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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

*Norman Goldman*  
\_\_\_\_\_  
PRESIDENT

*Bruce Mansley*  
\_\_\_\_\_  
COMMISSIONER

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





**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**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 :**

**D E C I S I O N**

**FOR 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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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.

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(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-115K 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 24<sup>th</sup> day of February, 1972.

**STATE TAX COMMISSION**

*Norman Jellison*  
\_\_\_\_\_  
PRESIDENT

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

*Milton Koen*  
\_\_\_\_\_  
COMMISSIONER