

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DIONNE M. WARRICK

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) 1965

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

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Dionne M. Warrick

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

wrapper addressed as follows: Dionne M. Warrick  
711 South Centre Street  
Orange, New Jersey

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

4th day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DIONNE M. WARRICK

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) 1965

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OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Samuel Scher

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel Scher  
c/o Weckslar, Wendorff & Scher  
100 West 42nd Street  
New York, New York 10036  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

4th day of August, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DIONNE M. WARRICK

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) 1965

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

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of August, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Albert Rettig, Esq.

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

wrapper addressed as follows: Albert Rettig, Esq.  
119 West 57th Street  
New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

4th day of August, 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 4, 1972**

**Dionne M. Warrick  
711 South Centre Street  
Orange, New Jersey**

**Dear Ms. Warrick:**

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

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

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

Very truly yours,

**Nigel G. Wright**

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	:	
DIONNE M. WARRICK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

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Dionne M. Warrick filed a petition for the redetermination of a deficiency issued under date of February 19, 1968, for personal income taxes under Article 22 of the Tax Law for the year 1965.

A hearing was held on April 18, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Albert Rettig, Esq., and Samuel Scher, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper allocation of the income of an entertainer who makes appearances and recordings in several states.

FINDINGS OF FACT

1. Petitioner is a resident of Maplewood, New Jersey. She is a singer and recording artist.

2. Petitioner received income from personal appearances in nightclubs both inside and outside of New York, from appearances on television shows produced in New York and from recordings made in New York and made outside of New York.

3. Petitioner filed a New York State income tax return allocating her total income to New York on the basis of the ratio of days worked inside the State to days worked everywhere.

4. Petitioner claims to have maintained an office for record-keeping and mail purposes at the home of her mother in Orange, New Jersey. She has a personal agent, Ward Management Corp., in New York City, and a booking agent, William Morris, in California. She does her recordings for "Scepter" a major popular music recording company. She employed her own musicians and aides who worked with her in her personal appearances.

5. The deficiency is computed on the basis of the income from contracts for personal appearances in New York and recordings which were made in New York. A certain amount attributable to contracts for personal appearances which were cancelled was by agreement allocated according to the ratio of appearances actually made in New York to such appearances everywhere.

6. Said deficiency amounts to \$775.40 plus interest of \$85.80, for a total of \$861.20.

#### CONCLUSIONS OF LAW

Petitioner is carrying on a business in New York. Her activities are purposeful income producing activities and not merely casual and isolated and are conducted with "a fair measure of permanency and continuity"(see Reg. 20 NYCRR 131.4(a)). Petitioner is clearly not an employee and so is not entitled to allocate on the basis of time under Reg 20 NYCRR 131.4(b). Even if she were an employee, each engagement would have to be treated as a separate employment, each of which clearly was located either completely inside or completely outside of New York.

Petitioner's income from recordings is properly taxable to New York since such recordings were made in New York. (See Ingram, Admx. (Caruso Est.) v. Bowers, 57 F 2d 65.) This is not

inconsistent with the Ruling of December 24, 1919, (C.C.H. New York State Tax Rep. ¶17-410.70). The place where the service is performed controls the jurisdiction to tax (Oxnard v. Murphy, 19 AD 2d 138, aff'd. 15 NY 2d 593).

DECISION

The petition is denied and the deficiency is sustained together with such further interest as may be due under section 684 of the Tax Law.

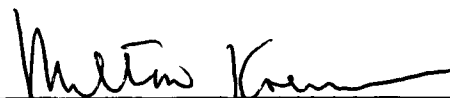
DATED: Albany, New York

STATE TAX COMMISSION

*August 4, 1972.*

  
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COMMISSIONER

  
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COMMISSIONER

  
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COMMISSIONER