

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEWMAN R. LADABOUCHE & DOROTHY J.  
LADABOUCHE

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) 1966, 1967 &  
1968

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 8th day of March , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Newman R. & Dorothy J. Ladabouche (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Newman R. Ladabouche  
550 Clubwood Court  
Marietta, Georgia

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

8th day of March , 1974

*James S. Van Patten*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEWMAN R. LADABOUCHE & DOROTHY J.  
LADABOUCHE

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) 1966, 1967 &  
1968

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 8th day of March , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon William Borden  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. William Borden  
48 West 48 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

8th day of March , 1974

*James S. Van Pelt*

*Martha Funaro*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

Mario A. Procaccino,  
~~NORMAN F. FADIN~~ 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

March 8, 1974

Mr. & Mrs. Newman R. Ladabouche  
550 Clubwood Court  
Marietta, Georgia

Dear Mr. & Mrs. Ladabouche:

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 **4 Months** after  
the date of this notice.

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

Very truly yours,

  
**Paul B. Coburn**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
NEWMAN R. LADABOUCHE and : DECISION  
DOROTHY J. LADABOUCHE :  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Years 1966, 1967 and 1968. :

---

Petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966, 1967 and 1968. (File Nos. 6-53039432 and 8-13003174).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on July 17, 1973 at 1:15 P.M. Petitioners appeared by William Borden, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

What portion of the income received by petitioner, Norman R. Ladabouche, from McGraw Hill, Inc., during the years 1966, 1967 and 1968 was allocable to New York State?

FINDINGS OF FACT

1. On February 26, 1967, petitioners, Norman R. Ladabouche and Dorothy J. Ladabouche, filed a New York State income tax non-resident return for the year 1966. They allocated the income received by petitioner, Newman R. Ladabouche, from McGraw Hill, Inc.,

based upon the number of days he alleged to have worked for his employer within and without New York State during said year. They demanded a refund of \$674.51.

2. On March 19, 1968, petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, filed a New York State income tax non-resident return for the year 1967. They allocated the income received by petitioner, Newman R. Ladabouche, from McGraw Hill, Inc., based upon the number of days he alleged to have worked for his employer within and without New York State during said year. They demanded a refund of \$828.71.

3. On January 27, 1969, petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, filed a New York State income tax nonresident return for the year 1968. They allocated the income received by petitioner, Newman R. Ladabouche, from McGraw Hill, Inc., based upon the volume of business he alleged to have transacted on behalf of his employer within and without New York State during said year. They demanded a refund of \$1,584.50.

4. On August 7, 1969, petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, filed an amended New York State income tax return for the year 1967. They allocated the income received by petitioner, Newman R. Ladabouche from McGraw Hill, Inc., based upon the volume of business he alleged to have transacted on behalf of his employer within and without New York State during said year. They demanded a refund of \$1,439.78.

5. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, imposing additional personal income tax for the year 1966 in the sum of \$259.83 upon the grounds that petitioner, Newman R. Ladabouche's commissions were based upon the volume of

business transacted by salesmen under his management and not directly by him and that therefore, he was not entitled to an allocation and all of his income received from McGraw Hill, Inc., was subject to New York State personal income tax. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$304.38.

6. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, imposing additional personal income tax for the year 1967 in the sum of \$465.79 and reducing the amount of refund due for the year 1968 to the sum of \$266.15 upon the grounds that petitioner, Newman R. Ladabouche, was required to allocate the income received from McGraw Hill, Inc., during said years based upon the number of days worked within and without New York State and that he failed to submit proof of such an allocation. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$251.56.

7. Petitioners, Newman R. Ladabouche and Dorothy J. Ladabouche, were residents of the State of Connecticut during the years 1966, 1967 and 1968. They resided at 1026 Stillwater Road, Stamford, Connecticut.

8. Petitioner, Newman R. Ladabouche, was employed by McGraw Hill, Inc., as advertising sales manager of the magazine Scientific Research during the years 1966, 1967 and 1968. The crux of his duties was to sell advertising in said magazine to the advertising managers of various companies. He would get the companies to commit a certain amount of dollars for the year for advertising in said publication. A letter contract was then entered into between McGraw Hill, Inc., and the company purchasing the advertising setting forth the dollar amount that the company would spend

on advertising during the year. He was responsible for all the gross advertising for the entire magazine and his compensation was based on the total gross sales of advertising for the magazine for the year.

9. During the years 1966, 1967 and 1968, McGraw Hill, Inc., employed a number of persons known as "salesmen" who worked under petitioner, Newman R. Ladabouche, in connection with his sales activities on behalf of the magazine Scientific Research. Although these people were called "salesmen", they did not do any selling and they received a fixed salary. Their function was to allocate to each monthly issue of the publication, a dollar amount of the advertising that had been purchased by the client for the year.

10. Petitioner, Newman R. Ladabouche, worked a total of 241 days during the year 1966 of which 195 days were worked within New York State. He worked a total of 234 days during the year 1967 of which 182 days were worked within New York State.

11. The gross advertising revenue for Scientific Research for the year 1966 was \$693,641.00 of which \$117,225.00 was attributable to companies located in New York State. It was \$607,342.00 for the year 1967 of which \$101,062.00 was attributable to companies located in New York State. It was \$733,310.00 for the year 1968 of which \$124,663.00 was attributable to companies located in New York State.

12. Petitioner, Newman R. Ladabouche, failed to submit any documentary or other substantial evidence to show the actual locations where he made the sales to companies located outside of New York State, during the years 1966, 1967 and 1968.



CONCLUSIONS OF LAW

A. That the compensation received by petitioner, Newman R. Ladabouche, a nonresident of New York State, from his employer, McGraw Hill, Inc., during the years 1966, 1967 and 1968 depended directly upon the volume of business transacted by him and, therefore, he would be entitled to allocate this compensation based upon the volume of business transacted by him within and without New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.15.


B. That, however, in the apportionment of commission income on the basis of sales made within and without New York State, the locations to be used are where the sales are actually made and not the geographic locations of the customers. Petitioner, Newman R. Ladabouche, who spent in excess of 75% of his working time in New York State, has failed to prove the actual locations where the sales were made and therefore, for purposes of allocation, all of his income from McGraw Hill, Inc., must be held to be derived from or connected with New York sources in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.15.

C. That the petition of Newman R. Ladabouche and Dorothy J. Ladabouche is denied and the notices of deficiency issued February 24, 1970 are sustained.

DATED: Albany, New York  
March 8, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER