

*Kerr, James & Virginia*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
JAMES W. KERR AND VIRGINIA  
V. KERR  
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) 1964 and 1965:

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

State of New York  
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon JAMES W. KERR AND VIRGINIA V. KERR (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: James W. & Virginia Kerr  
6112 Averill Way  
Dallas, Texas

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

19th day of January, 1971.

*Maitha Funaro*

*Linda Wilson*



their income was subject to personal income tax and accordingly issued a Notice of Deficiency in the sum of \$552.69.

3. During the years 1964 and 1965 petitioners, James W. Kerr and Virginia V. Kerr, leased an apartment at 101 East 16th Street, New York, New York. During said period they also owned a house located in Fort Worth, Texas.

4. During the year 1964 petitioner, James W. Kerr, spent 80 days in New York State. He spent a substantial balance of the year traveling on business. Petitioner, Virginia V. Kerr spent 46 weeks in New York State. She was employed in New York State during this time.

5. During the year 1965 petitioner, James W. Kerr, spent 97 days working in New York State. As a result of heart illness he was hospitalized at Doctors Hospital in New York. The illness lasted for two months. He spent a substantial balance of the year traveling on business. Petitioner, Virginia V. Kerr, was employed in New York State during this time. During the year they rented out their Texas house. On their 1965 Federal Income Tax return they deducted expenses and depreciation in connection therewith including "airplane fare to check property".

6. On their 1965 Federal Income Tax return petitioners, James W. Kerr and Virginia V. Kerr, listed their home address as 101 E. 16th Street #3G, New York, New York.

7. On their 1966 New York State combined income tax return petitioners, James W. Kerr and Virginia V. Kerr, stated that they were New York State residents for a portion of the year.

8. During the years 1964 and 1965 petitioners, James W. Kerr and Virginia V. Kerr, owned two automobiles which were registered in Texas. They maintained savings and checking bank accounts in Texas.

CONCLUSIONS OF LAW

A. That during the years 1964 and 1965 petitioners, James W. Kerr and Virginia V. Kerr, were domiciled in New York State and their incomes were subject to tax as resident individuals in accordance with the meaning and intent of 20 NYCRR 102.2(d) and Section 605(a)(1) of the Tax Law.

B. That the petition of James W. Kerr and Virginia V. Kerr is denied and the Notice of Deficiency issued April 1, 1968 is sustained.

DATED: Albany, New York  
*January 18, 1971.*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Bruce Maulley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koehn*  
\_\_\_\_\_  
COMMISSIONER