

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
William W. Fitzhugh & Jean R. :  
Fitzhugh :

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) 1962 & 1963 :

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 21st day of April , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon William W. Fitzhugh & Jean R. Fitzhugh (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William W. & Jean R. Fitzhugh  
402 Scofieldtown Road  
No. Stamford, Connecticut  
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

21st day of April , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of :  
William W. Fitzhugh & Jean R. :  
Fitzhugh :  
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) 1962 & 1963 :

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 21st day of April , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Milton Gold (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milton Gold  
295 Madison Avenue  
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

21st day of April , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
WILLIAM W. FITZHUGH & JEAN R. : DECISION  
FITZHUGH :  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Years 1962 and 1963. :

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The taxpayers having filed petitions for a redetermination of deficiencies in personal income tax imposed under Article 22 of the Tax Law for the year 1962 as determined under notice of March 28, 1966, and having filed a petition for refund of personal income tax imposed under Article 22 of the Tax Law for the year 1963 and a hearing having been duly scheduled before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue in this case is the statutory residence of the taxpayers under section 605 of the Tax Law during the taxable years in question.

2. The deficiency asserted against William W. Fitzhugh is in the amount of \$7,229.94 plus interest. The separate deficiency asserted against Jean R. Fitzhugh is in the amount of \$5,040.94, plus interest. It is admitted by the Income Tax Bureau that income of \$97,370.84 already included in the deficiency against William W. Fitzhugh is also included in the deficiency against Jean R. Fitzhugh. The claim for refund for 1963 is for \$4,393.47.

3. The taxpayers filed a combined non-resident return for 1962. In 1963, the taxpayers filed a combined non-resident return (IT-209), but the preparer included therein all income as for a resident and the Department finds it acceptable as a resident return. Thereafter, an amended return was filed on a non-resident basis with

a claim made for refund.

4. The taxpayers had three addresses outside of New York: a large estate in North Stamford, Connecticut and summer residences in Miami, Florida and in Golden Beach, Florida.

5. The taxpayers had a small one bedroom apartment at 880 Fifth Avenue, New York City, located close to the Lenox Hill Hospital.

6. Mr. William W. Fitzhugh became completely incapacitated in December, 1960, when he was 74 years old. He died on January 17, 1966. Jean R. Fitzhugh, his wife, was appointed conservatrix of her husband's estate on July 24, 1961, by order of the Court of Probate in and for the District of Stamford and State of Connecticut and she so acted until her husband's death.

7. Mr. Fitzhugh was a patient in the Lenox Hill Hospital during the years in question and when not in the hospital, he would stay in the Fifth Avenue apartment which was equipped with medical equipment necessary for his health. This was the case for about 230 days in each year. He was in Connecticut for about 130 days of each year. He had 24 hour nurse service during this time. During this time, Mrs. Fitzhugh would stay close to her husband in either a nearby hotel or in the apartment.

Upon the foregoing findings and all the evidence in the case  
The State Tax Commission hereby  
DECIDES:

A. Prior to 1961, Mr. Fitzhugh's domicile was in Connecticut and no change of domicile occurred when after being incapacitated he came to New York for medical treatment. However, the renting of the apartment in New York and the presence of both Mr. Fitzhugh and his wife in the apartment is evidence that they maintained a permanent place of abode in New York during the taxable year. The presence in New York for more than 183 days in each year, therefore, qualifies taxpayers as statutory residents of New York.

B. The petition of Jean R. Fitzhugh for 1962, is granted and the deficiency is cancelled to avoid double counting of income. The petition of William W. Fitzhugh for 1962, is denied and the deficiency is sustained together with such interest, if any, as may be due pursuant to the Tax Law. The petition for refund for 1963, is denied.

DATED: Albany, New York

*April 21, 1971*

STATE TAX COMMISSION

*Norman Bellman*  
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COMMISSIONER

*Reube Mauley*  
\_\_\_\_\_  
COMMISSIONER

*Walter Koerner*  
\_\_\_\_\_  
COMMISSIONER