

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK G. McNALLY

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:

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 29th day of October , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Frederick G. McNally (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Frederick G. McNally  
600 East Westminster  
Lake Forest, Illinois 60045

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

29th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of  
FREDERICK G. McNALLY

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) 1966 & 1967 :

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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 29th day of October , 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Karl Schelly, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Karl Schelly, Esq.  
77 West Washington Street  
Chicago, Illinois 60602

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

29th day of October , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
FREDERICK G. McNALLY : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1966 and 1967. :

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Petitioner, Frederick G. McNally, has filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 and 1967. (File Nos. 69180012 and 89180061). 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 April 19, 1971, at 1:30 P.M. Petitioner appeared by Karl Schelly, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Was petitioner, Frederick G. McNally, a resident or a nonresident of New York State during the years 1966 and 1967?

II. If petitioner, Frederick G. McNally, was a nonresident of New York State during the years 1966 and 1967, what portion of his salary income should be subject to New York State personal income tax for said years?

FINDINGS OF FACT

1. Petitioner, Frederick G. McNally, filed New York State nonresident income tax returns for the years 1966 and 1967.

2. On October 27, 1969, the Income Tax Bureau issued statements of audit changes against petitioner, Frederick G. McNally, imposing additional personal income tax for the years 1966 and 1967 upon the

grounds that he was a resident of New York State during said years and upon the further grounds that, even if he was a non-resident, he failed to substantiate the allocation of income for said years and accordingly issued a Notice of Deficiency for the year 1966 in the sum of \$6,571.23 and a Notice of Deficiency for the year 1967 in the sum of \$3,584.62.

3. Prior to the year 1965, petitioner, Frederick G. McNally, was a resident of and was domiciled in New York State. He lived in a two room apartment located at 135 East 54th Street in New York City. He was unmarried. In 1965, he married a widow with five children under 21 years of age, who resided in her home in Lake Forest, Illinois. After his marriage he went to live with her in Illinois. He maintained the apartment in New York for use on business trips. He was listed in the Lake Forest phone book. He made a will listing the Illinois address. He never voted in New York or in Illinois. He used the Illinois address on his 1965, 1966, and 1967 Federal income tax returns and on his 1966 and 1967 New York State income tax returns. His employer's principal place of business was located a short distance from his Illinois home.

4. During the years 1966 and 1967, petitioner, Frederick G. McNally, was a vice president and director of Rand McNally & Co. It was a Delaware corporation with its corporate headquarters in Skokie, Illinois. He was required to travel throughout the United States as well as overseas on company business. Executive, directors and sales meetings were generally held in Illinois. He spent 259 days during the year 1966 and 250 days during the year 1967 working for Rand McNally & Co. of which 65 days and 46 days respectively were worked in New York State. During each year he received a salary of \$40,000.08 from Rand McNally & Co.

5. Petitioner, Frederick G. McNally, spent 65 days in New York State during the year 1966, and 46 days during the year 1967.

6. Petitioner, Frederick G. McNally, spent 28 days during the year 1966, and 40 days during the year 1967, on personal business in the island of Jamaica.

CONCLUSIONS OF LAW

A. That petitioner, Frederick G. McNally, during the years 1966 and 1967 was domiciled in the State of Illinois and not in New York State and, therefore, since he maintained a permanent place of abode in New York State but spent in the aggregate less than 183 days of each of said taxable years in New York State, he was a nonresident individual in accordance with the meaning and intent of sections 605(a)(2) and 605(b) of the Tax Law.

B. That since petitioner, Frederick G. McNally, was a non-resident individual during the years 1966 and 1967, his New York State income tax obligations are recomputed in accordance with the meaning and intent of 20 NYCRR 131.16 as follows:

	<u>1966</u>	<u>1967</u>
Total N.Y. income $\frac{65}{259}$ days x \$40,000.08	\$10,038.62	
Total N.Y. income $\frac{46}{250}$ days x \$40,000.08		\$7,360.01
N.Y. standard deduction	<u>1,000.00</u>	<u>736.00</u>
Balance	\$ 9,038.62	\$6,624.01
Less exemption	<u>600.00</u>	<u>600.00</u>
New York taxable income	\$ 8,438.62	\$6,024.01
Total Tax	\$ 346.32	\$ 211.20
Less statutory credit	<u>12.50</u>	<u>12.50</u>
Personal income tax due	\$ 333.82	\$ 198.70
Tax withheld		\$2,152.80
Tax due reported	<u>84.06</u>	
Additional Personal Income Tax due	\$ 249.76	
Personal income tax refund		\$1,954.10
Interest to date of deficiency	\$ 37.96	

C. That the petitions of Frederick G. McNally are granted to the extent of recomputing his New York State income tax obligations as set forth in the prior paragraph and, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York  
*October 29, 1971*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Bruce Newley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kerner*  
\_\_\_\_\_  
COMMISSIONER