

Personal Income Taxes
- 1971

See Schold, George - 1974 - Personal Income Taxes.

Memorandum to S.T.C. from Ed Rook
Dated March 26, 1974

Mr. Schold is a nonresident for
income tax purposes - Commission agrees.

STATE OF NEW YORK
STATE TAX COMMISSION

*Schold - George B.
Lolita M.
Art 22 - Personal Inc.*

In the Matter of the Petition
of
George B. & Lolita M. Schold
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) 1963, 1964 & 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 16th day of March , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon George B. & Lolita M. Schold (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George B. & Lolita M. Schold
1009 Morina Circle
Albuquerque, New Mexico

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
16th day of March , 1971
Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 16th day of March, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Eric D. Martins, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Eric D. Martins, Esq.
c/o Bedlock Levine & Hoffman
385 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

16th day of March, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GEORGE B. & LOLITA M. SCHOLD
for a Redetermination of a Deficiency
or for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
years 1963, 1964 and 1965.

DECISION

George B. and Lolita M. Schold having filed petitions for the redetermination of deficiencies of personal income taxes imposed under Article 22 of the Tax Law and a hearing having been duly held on December 18, 1969, before Nigel G. Wright, Hearing Officer, with appearances by Eric D. Martins, Esq., of Beldock Levine and Hoffman for petitioners and Alexander Weiss, Esq., on behalf of Edward H. Best, on behalf of the Income Tax Bureau and the record of such hearing having been duly examined and considered,

The State Tax Commission hereby,

FINDS:

1. The issue in this case is whether the petitioners are taxable as residents of New York under Tax Law section 605(a) during 1963, 1964 and 1965 when they were domiciled in New York State but lived on a military base outside of the state.
2. The deficiencies in issue amount to \$219.90 for 1963; \$314.98 for 1964 and \$432.70 for 1965 together with interest for each year.
3. Mr. Schold was born in New York in 1915 and resided here until 1942 when he entered the armed forces. Since 1942, he has not occupied or had any interest in real property in New York. In each of the three years here in question, he spent less than 30 days

in New York State. Both he and his wife have voted in New York by absentee ballot until December 31, 1966 when he retired as a Colonel in the United States Air Force, the ceremony taking place at Hanscom Field, Massachusetts. Since then he has lived and worked in Albuquerque, New Mexico which he now considers his domicile.

4. Mr. Schold and his wife were domiciled in New York during 1963, 1964 and 1965.

5. From 1959 to 1962, Mr. Schold was stationed at Hanscom Field, Massachusetts. Adequate base housing there was not available and he purchased and lived in a house in Lexington, Massachusetts, from which he commuted to work.

6. In June 1962, Mr. Schold received permanent change of station orders assigning him to the Air Force Special Weapons Center, Air Force Systems Command, Kirtland Air Force Base, Albuquerque, New Mexico. He arrived in Albuquerque in August 1962. Base housing was available and Mr. Schold was assigned quarters at 2088B Mercury Drive, S. E., a four bedroom, southwestern style brick house on one-quarter of an acre of land located on the base. He stayed there until June 11, 1965.

7. While in Albuquerque, Mr. Schold's two sons went to schools located off the base and he and his wife were members of a church off the base. He and his wife were members of the Parent-Teachers Association of each school. His sons were members of the Boy Scouts of America and Mr. Schold served as a neighborhood commissioner and as chairman of a troop command of the Boy Scouts. Mr. and Mrs. Schold were made honorary Colonel Aides-de-Camp on the staff of the Governor of New Mexico and also members of the staff of the Secretary of State of New Mexico.

8. In June 1965, Mr. Schold, under permanent change of station orders, was assigned to the Headquarters Electronics Systems Command,

L. G. Hanscom Field, Bedford, Massachusetts. He reported there on June 21, 1965. Base housing was available and he was assigned to a three bedroom colonial brick front house situated on one-quarter acre of land at "Colonels Row", 69 Offutt Road, on the base.

9. While petitioners were at Hanscom Field, one of their sons attended an off-base high school. The other son had moved away from home. Petitioners were members of the Parent-Teachers Association as well as a local church. They were also members of a Gourmet Club, composed primarily of people from Lexington and Acton, Massachusetts.

10. The Air Force paid the costs of transportation of taxpayer's moves to Hanscom Field and to Kirtland Air Force Base. While living on base, the Colonel Schold forfeited his regular quarters allowance.

11. The assignment of base housing is the duty of the Commanding Officer of the base and is governed by Air Force Regulation 30-06. Such regulation states (in paragraph 8a): "The maximum practicable occupancy of family housing units or bachelors quarters shall be maintained at all times." Where necessary for maintaining such occupancy, the base commander may make involuntary assignments thereto from among assigned eligible personnel. The exercise of this authority normally should occur as personnel report to an installation for a permanent change of station and before a commitment for another dwelling by the individual concerned. The regulation further states that in establishing priorities for the assignment to family housing, rank, date of rank, and family size and composition shall be considered (paragraph 7(a)(3)). Assignment to quarters is terminated automatically upon a permanent change of station and at the discretion of the commanding officer upon temporary duty elsewhere or misconduct of the officer's dependents. Occupants are to be given a minimum of 30 days notice

to vacate quarters (paragraph 17-a).

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission hereby,

DECIDES:

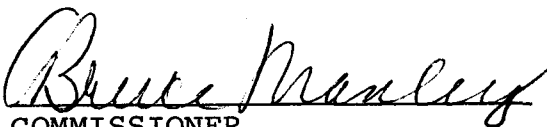
A. Petitioners did not sustain the burden of proof that for the years in question, they maintained a permanent place of abode outside the State within the meaning of section 605(a) of the Tax Law. As domiciliaries of New York State, they are, therefore, taxable as residents of New York State.

B. The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York
March 16, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER