

STATE OF NEW YORK
STATE TAX COMMISSION

Shaw, Arthur
Personal OBT.
16-16A

In the Matter of the Petition

of

Arthur Shaw

For a Redetermination of a Deficiency or
a Refund of Personal Business & Unincorporated Business
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) 1959

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 11th day of January , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur Shaw

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Arthur Shaw
Elm Street
Lakeville, 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

11th day of January , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Arthur Shaw

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 16 & 16A of the
Tax Law for the (Year(s) 1959

:
:
:
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 11th day of January , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur Shaw

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Fred W. Oberkirch
608 Fifth Avenue
New York, New York 10020

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

11th day of January , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
ARTHUR SHAW	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 and	:	
Unincorporated Business Taxes under	:	
Article 16-A of the Tax Law for the	:	
year 1959	:	

Applicant, Arthur Shaw, has filed applications for revision or refund of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the year 1959. (File # AB57280). A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 27, 1966 at 11:00 A.M. Applicant, Arthur Shaw, appeared by Fred W. Oberkirch, C.P.A.

FINDINGS OF FACT

1. Applicant, Arthur Shaw, filed a New York State income tax return for the year 1959.

2. On September 11, 1963 Arthur Shaw filed an application for refund of personal income taxes for the year 1959 upon the ground that his 1959 non-resident income tax return was erroneously filed since he was a resident of Spain and his income was not subject to New York State income tax.

3. On December 23, 1964 the Income Tax Bureau issued a notice of additional assessment against applicant, Arthur Shaw, and his wife imposing additional income tax and unincorporated business tax for the year 1959 upon the ground that he was a resident of New York State during the year 1959 and that the business activities reported constituted the carrying on of an unincorporated business. It also

assessed additional income tax on the basis of the federal audit of his 1959 federal income tax return.

4. On January 18, 1965 petitioner, Arthur Shaw, filed another application for revision or refund in which he claimed the refund contained in his prior application and requested a revision as to the assessment of December 23, 1964.

5. Petitioner, Arthur Shaw, was a musician, composer and author. In 1955 he sold his home in New York and in 1956 moved to Spain where he built a home. In 1957 in Spain he married Evelyn Keyes, an American citizen. He did not own any other real estate in the United States. He had not voted for many years prior to leaving for Spain. He did not surrender his United States passport. He did not apply for Spanish citizenship. He was not returning to his country of origin. In 1958 he made a will in Spain. In 1959 he made two trips from Spain to New York City in connection with his business activities. His business income was derived from record royalties and writing. He returned permanently to the United States in 1961.

6. Petitioner, Arthur Shaw, failed to show by any documentary or other substantial evidence that he spent less than 30 days within New York State during the year 1959.

7. Petitioner, Arthur Shaw, failed to show by any documentary or other substantial evidence that the net income from his business activities during the year 1959 represented income derived from a business carried on without New York State.

8. Petitioner, Arthur Shaw failed to show by any documentary or other substantial evidence that the assessment of additional tax on the basis of the federal audit was incorrect.

CONCLUSIONS OF LAW

A. That during the year 1959 applicant, Arthur Shaw, was domiciled in New York State and his income was subject to tax as a resident in accordance with the meaning and intent of Section

350 (7) of the Tax Law.

B. That no portion of the net income earned by applicant, Arthur Shaw, as royalties was derived from business activities carried on without New York State and he was therefore not entitled to an allocation of net unincorporated business income in accordance with the meaning and intent of Section 386g of the Tax Law.

C. That the adjustment of applicant, Arthur Shaw's taxable income for the year 1959 to conform with the audit of his federal income tax return was properly made.

D. That the applications of Arthur Shaw for revision or refund of personal income taxes and unincorporated business taxes for the year 1959 is denied and the notice of additional assessment dated December 23, 1964 is sustained.

DATED: Albany New York

STATE TAX COMMISSION

December 31, 1970

Norman Gallivan

COMMISSIONER

COMMISSIONER

Milton Kerner

COMMISSIONER