

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH D. ASHLEY

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) 1961 thru 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 18th day of August , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Kenneth D. Ashley (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Kenneth D. Ashley
6622 Glades Way
Sarasota, Florida

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

18th day of August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 18, 1972

**Kenneth D. Ashley
6622 Glades Way
Sarasota, Florida**

Dear Mr. Ashley:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

KENNETH D. ASHLEY : DECISION

for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1961 through 1963.

Kenneth D. Ashley filed a petition for a redetermination of deficiency in personal income tax imposed under Article 22 of the Tax Law for the years 1961 through 1963.

In lieu of a hearing, petitioner agreed to a submission of the controversy on the file of the Income Tax Bureau. Said file has been duly examined and considered.

ISSUES

The issues in this case relate to the residence status of the petitioner, the taxability of a pension received by him, and the imposition of a penalty upon him for failure to file a return.

FINDINGS OF FACT

1. Petitioner had been a domiciliary and resident of Connecticut prior to 1959. Petitioner worked for American Cyanamid Co. in Connecticut as a chemical engineer for 22 years. He retired. He now receives a pension from that company.

2. Petitioner come to New York in 1959 to work as a consultant to Texaco Research Laboratories in Beacon, New York. He stayed there until 1963. He rented an apartment in Beacon. This apartment was not sufficiently heated for the winter months. He spent the coldest months at homes of relatives in Connecticut and Massachusetts.

3. In November of 1962 petitioner acquired a house in Sarasota, Florida. There is no indication when he began to live in this house continuously.

4. Petitioner does not claim to have spent less than 183 days in New York in 1961. He admits to spending eight months in New York in 1962. He claims to have spent only 182 days in New York (May 4 to November 1) in 1963.

5. The 1961 deficiency was issued on March 15, 1965, and amounts to \$326.76 plus \$57.18 interest, for a total of \$383.94. This is based upon the inclusion in income of certain retirement income received by petitioner.

6. The deficiency for 1962 and 1963 was issued on November 22, 1965. For 1962 the deficiency amounts to \$400.24 plus penalty for delinquent filing under section 685(a) of the Tax Law of \$100.06 and interest of \$68.01 for a total of \$568.31. For 1963 the deficiency amounts to \$390.82 plus penalty of \$97.95 and interest of \$42.96 for a total of \$531.73.

7. It was not until June 3, 1965 that petitioner filed his 1962 and 1963 returns. Estimated tax payments had been made and an explanation was offered that the failure to file on time was due to oversight. Petitioner had been in continuous if infrequent correspondence with the Income Tax Bureau since 1959 with respect to his claim for exemption of his pension. The delinquency for 1962 and 1963 came to the attention of the Bureau upon the receipt of petitioner's letter and when petitioner was thereupon requested to file returns he did so with reasonable dispatch.

CONCLUSIONS OF LAW

A. For 1961 and 1962 petitioner was at least a statutory resident of New York by virtue of his apartment in Beacon and his presence here.

The same must be held true for 1963. The number of days of claimed presence in New York is too close to the statutory limit to be acceptable without detailed explanation and some proof. Whether petitioner became a New York domiciliary in 1959 or whether he became a Florida domiciliary in 1962 is therefore irrelevant.

B. Pensions as well as all other income from all sources are taxable to New York residents. The fact that a pension may be attributable to services which were performed entirely outside the State is not important since a pension would not be an "accrual" upon a change in residence under section 654 of the Tax Law.

C. The failure to file a return was not due to willful neglect.

DECISION

The petition is affirmed for the cancellation of penalties only. In all other respects the petition is denied and the deficiencies are affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

August 18, 1972

STATE TAX COMMISSION

Worren Gallman

COMMISSIONER

Bruce Newley


COMMISSIONER

Milton Kanner

COMMISSIONER

AD 32 (3-71) 50M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

 **SECRET**
REASON FOR RETURN
Unclaimed _____
Addressee unknown _____
Insufficient Address _____
No such street _____
No such office in state _____
Do not remail in this envelope _____

CERTIFIED
No. 592728
MAIL

Kenneth D. Ashley
6622 Glades Way
Sarasota, Florida

Post
Deceased
8154R



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

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