

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
EDWARD H. & ANTOINETTE BENEDICT :  
:  
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) 1968 :

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 19th day of July , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Edward H. &  
Antoinette Benedict (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Edward H. & Antoinette Benedict  
R.R. #1, Sewall's Point Road  
Jensen Beach, Florida 33457

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

19th day of July , 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York

July 19, 1972

Edward H. & Antoinette Benedict  
R.R. #1, Sewall's Point Road  
Jensen Beach, Florida 33457

Dear Mr. & Mrs. Benedict:

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

Please take further notice that pursuant to section(s)  
**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 relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Paul B. Coburn**  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EDWARD H. BENEDICT and ANTOINETTE	:	
BENEDICT	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

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Petitioners, Edward H. Benedict and Antoinette Benedict, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 8-29000940). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York for May 10, 1972, at 10:00 A.M. On April 8, 1972, petitioners waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Were petitioners, Edward H. Benedict and Antoinette Benedict, resident individuals of New York State during the period from August 19, 1968 to December 12, 1968?

FINDINGS OF FACTS

1. Petitioners, Edward H. Benedict and Antoinette Benedict, filed a New York State income tax resident return for the period from January 1, 1968 to April 30, 1968. They filed a New York State income tax nonresident return for the period from May 1, 1968 to December 31, 1968.

2. On April 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Edward H. Benedict and Antoinette Benedict, imposing additional personal income tax for the year 1968 in the sum of \$397.36 upon the grounds that they did not change their domicile and residence until December 12, 1968. Their tax liability was recomputed on the basis of 11/12 of their total income being subject to New York State personal income tax. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$445.76.

3. Petitioners, Edward H. Benedict and Antoinette Benedict, conceded that they were residents and domiciliaries of New York State from January 1, 1968 to August 19, 1968.

4. The Income Tax Bureau conceded that petitioners, Edward H. Benedict and Antoinette Benedict, became residents and domiciliaries of the State of Florida on December 12, 1968, at which time they established a residence at RR. #1, Sewells Point Road, Jensen Beach, Florida.

5. On August 14, 1968, petitioners, Edward H. Benedict and Antoinette Benedict, sold their home located in Mamaroneck, New York. On August 19, 1968, they boarded their 41 foot motor sailer, "Commandra" and set sail for southern waters. They lived on the boat during the period from August 19, 1968 to December 12, 1968, primarily off the coast of Florida. During this period they received their mail at the home of a friend who resided in Fort Lauderdale, Florida.

#### CONCLUSIONS OF LAW

A. That petitioners, Edward H. Benedict and Antoinette Benedict, were resident individuals of New York State from January 1, 1968 until December 12, 1968, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law, since they were domiciled in and spent more than thirty days in New York State during said period.

They did not prove that they had a bona fide intention of making the boat on which they lived during the period from August 19, 1968 to December 12, 1968, their fixed and permanent home in the State of Florida and, therefore, did not establish a new domicile in the State of Florida during said period in accordance with the meaning and intent of NYCRR 102.2(d)(2).

B. That the petition of Edward H. Benedict and Antoinette Benedict is denied and the Notice of Deficiency issued April 26, 1971, is sustained.

DATED: Albany, New York

*July 19, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*Bruce Hanley*  
COMMISSIONER

*Milton Korman*  
COMMISSIONER