

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALAN H. CORNISH & DOROTHY P.

CORNISH, His Wife

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

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman, 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 25th day of February, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Alan H. & Dorothy P. Cornish (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alan H. and Dorothy P. Cornish
192 Pheasant Run
Newington, Conn. 06111
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

25th day of February, 1972.

Martha J. Jones

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York
February 25, 1972

Alan H. & Dorothy P. Cornish
192 Pheasant Run
Newington, Conn. 06111

Dear Sir and Madam:

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 **four 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,


Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALAN H. CORNISH & DOROTHY P. CORNISH, : DECISION
His Wife :
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1966. :

Alan H. Cornish and Dorothy P. Cornish, his wife, petitioned for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1966.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on June 14, 1971. Mr. Cornish appeared, and the Income Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the petitioners effected a bona fide change of residence during the year 1966.

FINDINGS OF FACT

1. The petitioners, Alan H. and Dorothy P. Cornish, timely filed a New York State income tax resident return for the period January 1, 1966 through June 26, 1966.

2. On February 19, 1968, the Income Tax Bureau issued a Notice of Deficiency, under File No. 69112964, in the amount of \$183.74, plus interest, less credit for an overpayment on the 1966 tax return of \$56.30.

The deficiency was based on a determination by the Income Tax Bureau that the petitioners were residents of New York State for income tax purposes for the entire year 1966.

3. A petition for redetermination of the deficiency was timely filed with the State Tax Commission.

4. The petitioner, Alan H. Cornish, began full-time employment with Koehler-Dayton, Inc., in Dayton, Ohio on June 27, 1966. Mr. Cornish rented temporary quarters in the City of Dayton while his wife and four children remained at their residence in Buffalo, New York. During the remainder of the year, 1966, the children were registered and attended classes in the Buffalo area school district. However, his wife and children visited the Dayton, Ohio area to look for a new home, when necessary.

5. In July, 1966, Mr. Cornish surrendered the New York State registration plates for the two automobiles owned in his name, and registered them with the State of Ohio. At about the same time, he applied for a driver's license in the State of Ohio.

6. The petitioners listed their home in New York State for sale on June 3, 1966. On September 30, 1966, an offer for the purchase of their New York home was accepted by them, but the sale was not consummated at that time.

7. Mr. Cornish contracted for the construction of a new residence in Kettering, Ohio on October 15, 1966. A mortgage commitment was obtained on November 15, 1966, which was effective until April 15, 1967. The residence was almost completed on January 31, 1967, and the entire family moved in on that date to live there.

DECISION

A. The petitioners, Alan H. and Dorothy P. Cornish, did not effect a bona fide change of residence, but were residents of the State of New York for income tax purposes for the entire year 1966.

B. The petitioners' entire income is taxable for New York State income tax purposes for the year 1966.

C. The Notice of Deficiency is sustained and the petition for redetermination is denied.

DATED: Albany, New York
February 25, 1992.

STATE TAX COMMISSION

Thomas Gallman

COMMISSIONER

Bruce W. Wadley

COMMISSIONER

Milton Koenig

COMMISSIONER

October 10, 1972

Mr. Alan H. Cornish
192 Pheasant Run
Newington, Connecticut 06111

Dear Mr. Cornish:

Governor Rockefeller has asked me to reply to your letter of September 29, 1972, in which you protest the Tax Commission decision of February 25, 1972, which held that you were a resident during the entire year of 1966.

A Tax Commission decision is ordinarily final and the only review available is through the courts within four months of the decision which time has expired.

I did however review your case again on an informal basis and find that you maintained a home in New York in which your family resided for the entire year of 1966. Under these circumstances it can hardly be said you were not a resident of New York.

Our laws are not as harsh as you seem to think for, as protection against a double tax, should another state tax your income while a resident of New York, we grant a tax credit in the amount of such tax. For you, of course, Ohio did not have a personal income tax in 1966 and double taxation was not a consideration.

Mr. Alan H. Cornish

- 2 -

October 10, 1972

Finally, I should say, that although you were employed without the State for about six months, your family enjoyed the services of the State, including schooling throughout the year. Your classification as a resident seems to me to be far from a mere technicality, but an entirely reasonable and equitable result.

Sincerely,

NORMAN GALLMAN
Commissioner'

ER/jvp

cc-Palmer

192 Pheasant Run
Newington, Connecticut 06111

September 29, 1972

The Honorable Nelson Rockefeller
Governor of New York
Albany, New York 12227

Dear Governor Rockefeller:

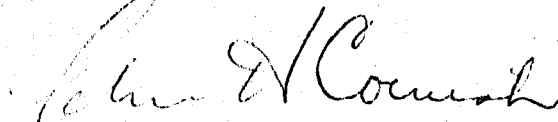
I have just concluded a long involved battle with the State Department of Taxation and Finance and have mailed a check with my final statement of my feelings on the matter.

As stated in my letter (copy attached), I feel that the entire matter has been handled in a manner unfair to myself, and I believe there are thousands of other taxpayers in similar circumstances.

While I cannot believe that the law, as written, requires interpretation as applied by the State Tax Department, I believe that a review of the language of the law is in order with a review to revising the law if necessary, to more equitably cover the circumstances in which I and many others find ourselves, i.e. forced to move in and out of the State within short periods by business transfers or changes of circumstances resulting in tax assessments in excess of those fairly due the State on the basis of time of use of services.

I would be pleased to provide additional data from my personal files if a review can be justified.

Yours very truly,


Alan H. Cornish

192 Pheasant Run
Newington, Connecticut 06111

September 28, 1972

New York State
Income Tax Bureau
State Campus
Albany, New York 12227

Gentlemen:

Attached please find my personal check in the amount of \$168.85 as demanded by your notice dated September 14, 1972 and received September 18, 1972.

This payment is made under protest that the assessment of the tax and the opportunities offered to discuss the matter with tax officials are grossly unfair. I feel that the entire process falls into this category for the following reasons.

1. Collection of four (4) years taxes in connection with 3-1/2 years of working and 3-1/2 years of living in the State can hardly be called fair taking into account the fact that the moving industry states that some 20% of the entire national population moves annually; and a large proportion of those people will find themselves in similar circumstances to mine.
2. Despite having expended considerable time, effort, and money to present factual support for my claims and travel on several occasions to meetings from outside the State where I currently resided, I have been unable to find a single state tax official willing to sit down and discuss the language of the tax law as it applies to this situation as opposed to administrative statements that the tax is due -- period - end of discussion.
3. I believe that forcing individuals to attempt to discuss matters of this nature at the demand and convenience, both from the standpoint of time and location of state tax officials, is totally unfair to a taxpayer with legitimate reasons to discuss the issues.
4. I believe that taking six (6) years to process even a meaningless decision, such as was rendered in my case, is totally ridiculous.

It appears that the only true recourse would be to force the issue into a court outside the State of New York where the issues would have to

September 28, 1972

be argued on their merits instead of on administrative edict.

Please be advised that I intend to continue efforts to obtain satisfaction even though the direct method of court challenge is beyond reason because of cost.

Yours sincerely,



Alan H. Cornish

cc: Governor Rockefeller
Senator Ribicoff
Senator Weikert