

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MANUEL & ESPERANZA URRUTIA

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) 1965 and 1966.

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

State of New York  
County of Albany

Lynn Wilson, 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 20th day of June, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon MANUEL & ESPERANZA URRUTIA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Manuel and Esperanza Urrutia  
Apt. 2H, 94-30 58th Avenue  
Rego Park, New York 11373  
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

20th day of June, 1972

Karl Zimmerman

Lynn Wilson



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**June 20, 1972**

**Manuel and Esperanza Urrutia**  
**Apt. 2H, 94-30 58th Avenue**  
**Rego Park, New York 11373**

**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(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MANUEL & ESPERANZA URRUTIA	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1965 and 1966.	:	

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Manuel and Esperanza Urrutia filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income taxes asserted for the years 1965 and 1966.

A hearing was held on July 30, 1971, before Nigel G. Wright, Hearing Officer. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner is entitled under section 165(I) of the Internal Revenue Code to a loss deduction arising out of the confiscation of his property by the Cuban government and which affected the years in question by reason of a carry-over of that loss.

FINDINGS OF FACT

1. Petitioners were born and raised in Cuba and are citizens of Cuba. Dr. Urrutia became a lawyer in 1923. He became a judge in 1927 and retired therefrom on December 18, 1957.

2. Because of the hostility of the Batista government. Dr. Urrutia and his family came to the United States on December 19, 1957

entering in Florida under an immigration visa. He came to New York City with his family on December 23, 1957. He lived for a while in hotels and then moved to a house in Woodside Avenue in Queens. His wife, two sons and infant daughter, and his mother and mother-in-law lived with him there.

3. On November 2, 1958, Dr. Urrutia, his wife and his youngest son went to Venezuela to participate with diverse groups in an attempt to overthrow the Batista government in Cuba. He arrived in Cuba on December 7, 1958 and lived there with other revolutionaries in the Sierra Maestra mountains in Oriente Province. It had been planned to have a "government-in-arms" with Dr. Urrutia as President. However, Batista resigned as President on January 1, 1959 and fled the country. Dr. Urrutia was proclaimed provisional President of the Republic of Cuba on January 2, took the oath on January 3, and arrived in Havana on January 5. The Cuban Government sent a plane to New York on January 10, 1959 to transport the remainder of Dr. Urrutia's family to Cuba. His eldest son, his infant daughter and his mother and mother-in-law had remained at the house in Queens until then.

4. On July 17, 1959, after having attacked Communism, he was ousted and replaced as President by the forces of Fidel Castro. He and his family remained in Cuba. On April 18, 1961, Dr. Urrutia and his family took advantage of the confusion caused by the Bay of Pigs invasion to take refuge in the Venezuelan Embassy in Havana. His family was released from there on October 16, 1961 and reentered the United States as residents. Shortly thereafter, Dr. Urrutia stayed there until he was released in March, 1963. He reentered the United States as a resident a few days later and has not returned to Cuba.

Not having returned to Cuba, the property of Dr. Urrutia was confiscated by the Castro government under a law enacted on December 5, 1961, applicable to all Cubans who leave Cuba and fail to return. The fact of such confiscation or such loss is not in issue.

5. The deficiency amounts to \$173.52 for 1965 and \$271.75 for 1966, both with interest.

CONCLUSIONS OF LAW

There is no doubt that petitioner meets the condition of section 165(2)(1) of the Internal Revenue Code that he had to be a resident of the United States on December 31, 1958, (See U.S. Treasury Rev. Rul. 64-149; I.R.B. 1964-20, p.14). In fact, he was most likely a domiciliary of New York at such time (See Kosciusko's case, Ennis v. Smith, 55 U.S. 400, 14 L.ed. 472).

DECISION

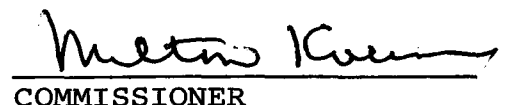
The petition is allowed and the deficiency is cancelled in full.

DATED: Albany, New York

*June 20, 1972.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER