

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN T. WHITELY

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) 1963 and :  
1964

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 28th day of June , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon JOHN T. WHITELY

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

wrapper addressed as follows: John T. Whitely  
245 Park Avenue  
New York, New York

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

28th day of June , 1972.

Deborah Funnard

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN T. WHITELY

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) 1963 and  
1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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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 28th day of June, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon ALFRED J. CRONIN c/o MURPHY, LANIER & QUINN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alfred J. Cronin c/o Murphy, Lanier & Quinn 331 Madison Avenue New York, New York 10017 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

28th day of June, 1972.

Martha Turner

Lynn Wilson



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

**DATED:** Albany, New York  
**June 28, 1972**

**John T. Whitely**  
**245 Park Avenue**  
**New York, New York**

**Dear Mr. Whitely:**

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,

**Paul B. Coburn**

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 Petitions	:	
of	:	
JOHN T. WHITELEY	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1963 and 1964.	:	

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Petitioner, John T. Whitely, has filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1963 and 1964. (File Nos. 3-8471499 and 29003636). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 16, 1972, at 9:20 A.M. Petitioner appeared by Alfred J. Cronin, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Was petitioner, John T. Whitely, a resident of New York State during the year 1964?

II. Did petitioner, John T. Whitely, substantiate home maintenance expenses in the sum of \$771.15 and legal expenses in the sum of \$184.30 for the year 1963?

III. May the Income Tax Bureau, by motion at the formal hearing, amend the Statement of Audit Changes issued against petitioner, John T. Whitely, for the year 1963 to raise, for the first time, the issue of his residence for said year?

FINDINGS OF FACT

1. Petitioner, John T. Whitely, and his wife, on March 13, 1964 filed a New York State combined resident income tax return for the

period January 1, 1963 to June 1, 1963. On March 22, 1965, he filed an amended New York State income tax resident return for the period January 1, 1963 to June 1, 1963 and an amended New York State income tax nonresident return for the period from June 1, 1963 to December 31, 1963. The amended returns were received by the Income Tax Bureau on March 30, 1965.

2. Petitioner, John T. Whitely, filed a New York State income tax nonresident return for the period from January 1, 1964 to September 30, 1964. He filed a New York State income tax resident return for the period from October 1, 1964 to December 31, 1964.

3. On August 9, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John T. Whitely, disallowing for the year 1963 home maintenance expenses in the sum of \$771.15, legal expenses in the sum of \$1,009.92 and a bad debt deduction in the sum of \$3,688.80. It imposed additional personal income tax due in the sum of \$1,192.92 as a result of the disallowance of the aforesaid deductions. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,287.28.

4. On November 27, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John T. Whitely, imposing additional personal income tax due for the year 1964 in the sum of \$933.57 upon the grounds that he was a resident of New York State for the entire taxable year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,080.11.

5. At the formal hearing, the Income Tax Bureau moved to amend the Statement of Audit Changes and Notice of Deficiency issued against petitioner, John T. Whitely, for the year 1963 so as to increase the amount of the deficiency based upon the contention that he had been a resident of New York State for the entire year.

6. At the formal hearing, petitioner, John T. Whitely's representative conceded that a bad debt deduction in the sum of \$3,688.80 and legal expenses in the sum of \$825.62 for the year 1963 were properly disallowed.

7. Petitioner, John T. Whitely, purchased a home in Sands Point, New York in 1952. He lived there with his wife and children until late in 1961, at which time his wife and children moved to Fort Lauderdale, Florida. He was subsequently divorced in 1965. He lived in the Sands Point home until June, 1962. He rented his home commencing June 1, 1962. He then leased an apartment in New York City commencing September 1, 1962. He resided in the apartment until June 1, 1963. On June 1, 1963, he went to live in the home of his parents in Greenwich, Connecticut. The house was listed for sale on June 1, 1963. On October 1, 1964, he left the home of his parents and leased an apartment in New York City. He rented his Sands Point home until June of 1963, when the tenant was evicted for nonpayment of rent. The Sands Point home remained unoccupied until it was sold on March 24, 1965.

8. Petitioner, John T. Whitely, did not register to vote in Connecticut during the period June 1, 1963 through October 1, 1964. He last voted in New York State prior to moving to Connecticut. He did not have a will. He maintained his memberships in the Sands Point Bath Club and the Sands Point Golf Club during this period. He maintained his personal bank accounts in New York City. He did not maintain any bank accounts in Connecticut.

9. In mid 1961, petitioner, John T. Whitely, resigned his position as executive vice president of W.P. Grace & Co. and accepted a position as president and chief executive officer of Amerace Corporation. During the years 1962 and 1963, Amerace Corporation explored the possibilities of relocating their corporate offices from New York City to Connecticut. Subsequently, the relocation plans were tabled and no move was made.

10. Petitioner, John T. Whitely, spent more than 30 days in New York State during each of the years 1963 and 1964.

11. Petitioner, John T. Whitely, failed to submit documentary or other sufficient evidence to prove that he incurred home maintenance expenses in the sum of \$771.15 and legal expenses in the sum of \$184.30 during the year 1963.

CONCLUSIONS OF LAW

A. That during the year 1964, petitioner, John T. Whitely, was domiciled in New York State and spent more than 30 days in New York State and, therefore, during said year, his income was subject to the New York State personal income tax as a resident individual in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

B. That petitioner, John T. Whitely, failed to substantiate \$771.15 in alleged home maintenance expenses and \$184.30 in alleged legal expenses for the year 1963, since he did not submit documentary or other sufficient evidence to support his claim and accordingly said itemized deductions were properly disallowed.

C. That since petitioner, John T. Whitely's amended resident and nonresident New York State income tax returns for the year 1963 were filed on March 30, 1965, the Income Tax Bureau had until March 30, 1968, to assess an additional tax against him in accordance with the meaning and intent of section 683(a) of the Tax Law, as none of the exceptions set forth in section 683(c) of the Tax Law applied. The Statement of Audit Changes and Notice of Deficiency issued August 9, 1965, concerned itself solely with the disallowance of certain alleged expenses claimed for the year 1963. It raised no issue as to the period of his residence during said year. The Income Tax Bureau could not properly raise the issue of residence at the formal hearing, which was conducted more than three years from the date of the filing of the returns, where such issue was


not raised on the original Statement of Audit Changes issued within the three-year statutory period. Such attempted additional assessment was barred by the limitation on assessments set forth in section 683(a) of the Tax Law.

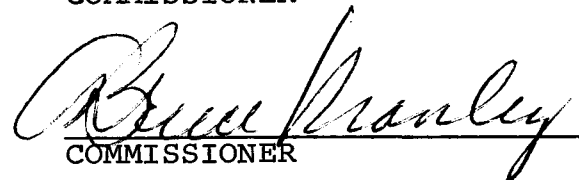
D. That the petitions of John T. Whitely are denied and the motion of the Income Tax Bureau to amend the Statement of Audit Changes and Notice of Deficiency for the year 1963 is denied and the notices of deficiency issued August 9, 1965 and November 27, 1967, are sustained.

DATED: Albany, New York

*June 28, 1972.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER