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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD E. FREITAG & FLORENCE FREITAG

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 10th day of July , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon Edward E. Freitag & Florence Freitag (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward E. & Florence Freitag  
5600 Collins Avenue  
Miami Beach, 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

10th day of July , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 10th day of July , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon Norman Nadel, C.P.A

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

wrapper addressed as follows: Norman Nadel, C.P.A.  
18 East 41st Street  
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

10th day of July , 19 73

Lynn Wilson

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 10, 1973

Edward H. & Florence Freitag  
5600 Collins Avenue  
Miami Beach, Florida

Dear Mr. & Mrs. Freitag:

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,

  
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 E. FREITAG and : DECISION  
FLORENCE FREITAG :  
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 E. Freitag and Florence Freitag, 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. 8-29179727). 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 March 30, 1973, at 3:45 P.M. Petitioners appeared by Norman Nadel, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Were petitioners, Edward E. Freitag and Florence Freitag, residents of New York State during the year 1968?

FINDINGS OF FACT

1. Petitioners, Edward E. Freitag and Florence Freitag, filed a New York State income tax nonresident return for the year 1968. They listed their address as 5600 Collins Avenue, Miami Beach, Florida on said return. They listed their total Federal income as \$55,554.00 and their total New York State income as zero.
2. On July 27, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Edward E. Freitag and Florence Freitag, imposing New York State personal income tax upon all of

their income for the year 1968, upon the grounds they were New York residents during the entire year. It accordingly issued a Notice of Deficiency against them in the sum of \$5,478.07.

3. In 1966, petitioners, Edward E. Freitag and Florence Freitag, resided in a furnished apartment in the Hotel Blackstone, a residential hotel located in New York City. In said year, petitioner, Florence Freitag, developed a serious heart ailment and was advised by her physician to move to a warmer climate. In September, 1966, petitioner, Edward E. Freitag, sold his liquor distributing business which was located in New York City.

4. In December, 1967, petitioners, Edward E. Freitag and Florence Freitag, moved to a suite in the Hotel Fontainbleu in Miami Beach, Florida. They shipped all of their personal belongings to Florida. They lived at said hotel until April, 1968.

5. On February 7, 1968, petitioners, Edward E. Freitag and Florence Freitag, entered into a three year lease for an unfurnished apartment in an apartment building being constructed at 5600 Collins Avenue in Miami Beach, Florida.

6. In April, 1968, petitioners, Edward E. Freitag and Florence Freitag, vacated their suite in the Hotel Fontainbleu and went to live with petitioner, Edward E. Freitag's brother and sister-in-law in their home located in Miami Beach, Florida. They lived there until October, 1968.

7. In May, 1968, the lease for petitioners, Edward E. Freitag and Florence Freitag's apartment in the Hotel Blackstone in New York City was terminated by mutual consent of lessor and lessee.

8. In October, 1968, petitioners, Edward E. Freitag and Florence Freitag, vacated their quarters in petitioner, Edward E. Freitag's brothers home and moved into the Hotel Plaza. This hotel was located across the street from the apartment house under construction at 5600 Collins Avenue.

9. In November, 1968, petitioners, Edward E. Freitag and Florence Freitag's apartment at 5600 Collins Avenue was ready for occupancy and they moved into it during said month.

10. Petitioner, Edward E. Freitag, made three or four trips to New York State during the year 1968. He was not accompanied by his wife on these trips. He stayed at a hotel or at a niece's home while he was in New York State. He spent less than thirty days in New York State during said year.

11. Petitioner, Edward E. Freitag, has continually lived in Florida from December, 1967, to the present time. He came into New York State for one or two days a year subsequent to 1968. Petitioner, Florence Freitag, lived continually in Florida until her death in 1970.

12. Petitioners, Edward E. Freitag and Florence Freitag, maintained stock brokerage and bank accounts in New York and in Florida during the year 1968.

13. Petitioners, Edward E. Freitag and Florence Freitag, did not file a Florida personal property tax return for the year 1968.

14. Petitioner, Edward E. Freitag, did not file a Florida certificate of domicile until 1970. He did not register to vote in Florida until 1972.

#### CONCLUSIONS OF LAW

A. That petitioners, Edward E. Freitag and Florence Freitag, were resident individuals of New York State during the year 1968 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2 since they were domiciled in New York

State during said year and maintained a permanent place of abode in New York State during a portion of said year.

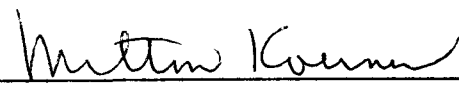
B. That the petition of Edward E. Freitag and Florence Freitag is denied and the Notice of Deficiency issued July 27, 1970, is sustained.

DATED: Albany, New York  
July 10, 1973

STATE TAX COMMISSION

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

  
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COMMISSIONER