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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE and ELAINE GOLDBERG

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) 1967 & 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 April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon LAWRENCE and
ELAINE GOLDBERG (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. & Mrs. Lawrence Goldberg
1119 East 10th Street
Brooklyn, New York 11223

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 April, 1974

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE and ELAINE GOLDBERG

For a Redetermination of a Deficiency or
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Tax Law for the Year(s) 1967 & 1968.

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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 April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon NORMAN SIMPSON, 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 Simpson, P.A.
331 Madison 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

10th day of April, 1974

Joyce S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

~~NORMAN F. ROXMAN~~
Mario A. Procaccino
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 10, 1974

Mr. & Mrs. Lawrence Goldberg
1119 East 10th Street
Brooklyn, New York 11223

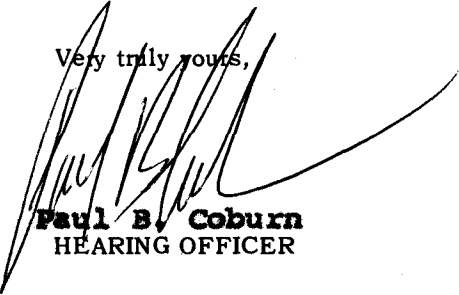
Dear Mr. & Mrs. Goldberg:

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

In the Matter of the Petitions :
of :
LAWRENCE GOLDBERG and ELAINE GOLDBERG : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1967 and 1968. :

Petitioners, Lawrence Goldberg and Elaine Goldberg, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 and 1968. (File Nos. 75954844 and 8-16288547). 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 November 16, 1973, at 10:30 A.M. Petitioners appeared by Norman Simpson, P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Were petitioners, Lawrence Goldberg and Elaine Goldberg, resident individuals of New York State during the years 1967 and 1968?

FINDINGS OF FACT

1. Petitioners, Lawrence Goldberg and Elaine Goldberg, filed New York State income tax resident returns for the years 1967 and 1968. They subtracted from total income for the year 1967, \$12,386.95 in wages received by petitioner, Lawrence Goldberg, from Detroit Independent Sprinkler Co. and a tax refund of \$6.30, leaving an alleged total New York income of \$926.63. They subtracted from total income for the year 1968, \$8,433.48 in wages received by petitioner, Lawrence Goldberg, from the aforesaid company and a tax refund of \$70.07, leaving an alleged total New York income of \$2,625.10.

2. On March 15, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Lawrence Goldberg and Elaine Goldberg, imposing additional personal income tax for the year 1967 upon the grounds that petitioner, Lawrence Goldberg, was a resident of New York State for the entire year and therefore his salary income earned in Michigan was subject to New York State personal income tax. It also imposed additional personal income tax to conform with Federal audit changes, which latter item is not being contested by petitioners. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$745.03.

3. On September 27, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Lawrence Goldberg and Elaine Goldberg, imposing additional personal income tax for the year 1968 upon the grounds that petitioner, Lawrence Goldberg, was a resident of New York State for the entire year and therefore his salary income earned in Michigan was 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 \$298.01.

4. Petitioner, Lawrence Goldberg, was a plumber. During the year 1967 and from January 1, 1968 through August 15, 1968, he was employed installing sprinkler systems in Detroit, Michigan by Detroit Independent Sprinkler Co. He obtained the job through the plumber's union. He had been unable to find steady work in the New York City area. He did not have a written employment contract. He lived in either a hotel or a furnished apartment during the time he was working in Michigan.

5. During the years 1967 and 1968, petitioners, Lawrence Goldberg and Elaine Goldberg, continued to maintain a leased apartment in a two-family house in Brooklyn owned by a relative. They had lived there for many years. Petitioner, Elaine Goldberg, lived in this apartment

with their daughter during the period from January 1, 1967 through August 15, 1968, with the exception of summers and occasional weekends when they visited petitioner, Lawrence Goldberg, in Michigan. The daughter attended school in New York City during this period. Petitioner, Lawrence Goldberg, returned to New York during Christmas week in 1967 and on occasional weekends. They listed the New York City address as their home address on their New York State, Michigan, and Federal income tax returns.

CONCLUSIONS OF LAW

A. That petitioners, Lawrence Goldberg and Elaine Goldberg, were domiciled in New York State during the years 1967 and 1968. They at no time effected a change of domicile to the State of Michigan.


B. That since petitioners, Lawrence Goldberg and Elaine Goldberg, were domiciliaries of New York State during the years 1967 and 1968, and since they maintained a permanent place of abode in New York State during said years, therefore, they were subject to New York State personal income tax as resident individuals on all of their income, including income earned outside of New York State, during said years in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

C. That the petitions of Lawrence Goldberg and Elaine Goldberg are denied and the notices of deficiency issued March 15, 1971 and September 27, 1971, are sustained.

DATED: Albany, New York
April 10, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER