

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES J. PHELAN and
SONDRA S. PHELAN

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

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.

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 6th day of May , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon James J. Phelan and Sondra S. Phelan (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. James J. Phelan
16 East 93 Street
New York, New York 10028
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

6th day of May

, 19 74

James J. Van Latten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES J. PHELAN and
SONDRA S. PHELAN

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

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 6th day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Isidore Rubin,

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: Isidore Rubin, C.P.A.
22 West 48th Street
New York, New York 10036

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

6th day of May , 1974

James A. 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
~~Mario A. Procaccino~~
~~SECRETARY TO COMMISSION~~
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 6, 1974

Mr. & Mrs. James J. Phelan
16 East 93 Street
New York, New York 10028

Dear Mr. & Mrs. Phelan

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	:	
JAMES J. PHELAN and	:	
SONDRA S. PHELAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1966.	:	

Petitioners, James J. Phelan and Sondra S. Phelan, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966. (File No. 69268544). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on February 26, 1974, at 2:45 P.M. Petitioners appeared by Isidore Rubin, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Were petitioners, James J. Phelan and Sondra S. Phelan, resident individuals of New York State during the entire year of 1966?

FINDINGS OF FACT

1. Petitioners, James J. Phelan and Sondra S. Phelan, filed a New York State combined income tax return for the period from January 1, 1966 to January 17, 1966. They demanded a refund of \$2,442.60 on said return.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, James J. Phelan, imposing additional personal income tax for the year 1966 in the

sum of \$175.26 upon the grounds that he was a resident individual of New York State during all of said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$202.68.

3. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Sondra S. Phelan, imposing additional personal income tax for the year 1966 in the sum of \$1,322.87 upon the grounds that she was a resident individual of New York State during all of said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,529.86.

4. Petitioner, James J. Phelan, was employed in the U.S. Department of the Chase Manhattan Bank prior to January 1, 1966. He was promoted to a position as manager of the Paris branch of the international department of said bank as of January 1, 1966. He received a two-week training course in New York City and left for France on January 17, 1966. His wife, petitioner, Sondra S. Phelan, and his two children accompanied him.

5. Petitioners, James J. Phelan and Sondra S. Phelan, and their two children during the year 1966 lived in a hotel in France for approximately four weeks. They then lived in a furnished apartment for approximately three months. They then leased an unfurnished apartment under a three-year lease. They lived in said apartment until they returned to the United States in 1969 when, petitioner, James J. Phelan, was promoted to a position in the New York office of Chase Manhattan Bank.

6. Petitioners, James J. Phelan and Sondra S. Phelan, lived in a cooperative apartment in New York City prior to January 17, 1966. They vacated the apartment and placed their furniture in temporary storage when they moved to France. They sold the

apartment as of March 22, 1966. They shipped their furniture to France when they leased the unfurnished apartment in the spring of 1966.

7. Petitioners, James J. Phelan and Sondra S. Pehlan, did not maintain memberships in any social organizations in the United States after they left for France in January 1966. They did not vote in any elections in the United States while they resided in France. Their children attended a French parochial school. They obtained a French Residency Permit. They filed a French income tax return for 1966. He joined a golf club and an eating club in France which he used to entertain his employer's clients.

8. Petitioners, James J. Phelan and Sondra S. Phelan, were not born or raised in France. They executed wills in the United States in 1965 which were not changed while in France. They owned a farm in East Hampton, New York, which they rented out during the year 1966.

9. Petitioners, James J. Phelan and Sondra S. Phelan, maintained a permanent place of abode in New York State during the period from January 1, 1966 to January 17, 1966. They maintained a permanent place of abode in France during the period from approximately May 1966 until they returned to the United States in 1969.

10. Petitioner, James J. Phelan, spent 33 days in New York State during the year 1966.

11. Petitioner, Sondra S. Phelan, spent 17 days in New York State during the year 1966.

CONCLUSIONS OF LAW

A. That petitioners, James J. Phelan and Sondra S. Phelan, were domiciled in New York State during the entire year of 1966. They did not change their domicile from New York State to France during said year.


B. That since petitioner, James J. Phelan, was a domiciliary of New York State during the year 1966, maintained a permanent place of abode in New York State during a portion of said year, did not maintain a permanent place of abode in France during said entire year and spent more than 30 days in New York State during said year, therefore, he was a resident individual of New York State during all of said year in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

C. That since petitioner, Sondra S. Phelan, was a domiciliary of New York State during the year 1966, maintained a permanent place of abode in New York State during a portion of said year, and did not maintain a permanent place of abode in France during said entire year, therefore, she was a resident individual of New York State during all of said year, even though she spent less than 30 days in New York State during said year, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.


D. That the petitions of James J. Phelan and Sondra S. Phelan are denied and the notices of deficiency issued November 24, 1969, are sustained.

DATED: Albany, New York
May 6, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER