

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES P. WILL and KATHLEEN WILL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~XX~~ 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1969, 1970 and 1971.

State of New York
County of Albany

Catherine Steele, 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 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon James P. Will and Kathleen Will ~~(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 P. Will
River Road
Stratham, New Hampshire 03885
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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

23rd day of August, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 23, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. James P. Will
River Road
Stratham, New Hampshire 03885

Dear Mr. & Mrs. Will:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(**X**) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

~~XX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES P. WILL and KATHLEEN WILL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1969, 1970 and 1971.	:	

Petitioners, James P. Will and Kathleen Will, River Road, Stratham, New Hampshire 03885, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1969, 1970 and 1971.

The petitioners, in writing, waived a formal hearing and submitted the case to the State Tax Commission for a decision on information contained in the file. The State Tax Commission renders the following decision upon due consideration of said record.

ISSUE

Whether the taxpayers, a serviceman and his wife, who left New York State in 1969, were liable for income taxes in 1969, 1970 and 1971.

FINDINGS OF FACT

1. Petitioners, James P. Will and Kathleen Will, timely filed New York State income tax returns for the years in issue.

2. A Notice of Deficiency in personal income taxes for the years 1969, 1970 and 1971 was issued on March 26, 1973, against the taxpayers under File No. 1-89131385. The deficiencies for these years totaled \$118.07.

3. The taxpayers petitioned for redetermination of the deficiencies and claimed that previously withheld taxes should be refunded.

4. The taxpayer, James P. Will, resided in New York State from January 1, 1969 to February 3, 1969, at which time he enlisted in the armed services and left New York State. Kathleen M. Will lived in New York State until July 12, 1969, at which time she married James P. Will and left New York State. She resided with her husband at all times thereafter except for a brief period in 1971, when she visited New York City from June 10, 1971 to August 31, 1971, while enroute to the Philippines.

5. The taxpayers maintained a household outside of New York State from the time of their marriage throughout all the times in question except the times when they were in transit to another place. At such times they were not in New York except for the 1971 visit of Kathleen Will to New York City.

CONCLUSIONS OF LAW

A. That James P. Will and Kathleen M. Will, both of whom were residents of New York at the beginning of 1969, each spent more than 30 days in New York State in 1969 and therefore the deficiency of \$17.51 for 1969 is sustained. Section 605(a)(1) of the Tax Law.

B. That having been in New York City from June 10, 1971 to August 31, 1971, therefore Kathleen M. Will was a resident of New York for 1971, and the deficiency against her for 1971 is sustained. Section 605(a)(1) of the Tax Law.

C. That except as noted in B, the taxpayers were nonresidents of New York State after 1969 and maintained their only permanent places of abode outside New York State. Ryan v. Chapman, 273 AD 99; Scholz v. Comm., 38 AD 2d 775 Aff'd, 33 NY 2d 678. The income earned by the taxpayers outside of New York State in 1970 is not subject to New York State income tax and the deficiencies for 1970 are cancelled. The income earned by James P. Will in 1971 is not subject to tax and the deficiency against him for 1971 is cancelled.

DATED: Albany, New York
August 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER