

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK, JR. & ELIZABETH BUXTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) ~~xxx Period(s)~~  
1965, 1966 and 1967

State of New York  
County of Albany

Marsina Donnini, 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 15 day of July, 1977, she served the within  
NOTICE OF DECISION by (certified) mail upon Frank, Jr. and  
Elizabeth Buxton ~~(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. Frank Buxton, Jr.

Box 84

Franconia, New Hampshire 03580

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~~  
~~xxx 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

15 day of July, 1977.

*Marsina Donnini*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK, JR. & ELIZABETH BUXTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) or Period(s) :  
1965, 1966 and 1967

State of New York  
County of Albany

Marsina Donnini, 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 15 day of July, 1977, she served the within NOTICE OF DECISION by (certified) mail upon Albert E. Bernstein (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Albert E. Bernstein, CPA  
111 West 57th Street  
New York, New York 10019  
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

15 day of July, 1977

Marsina Donnini

James Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

July 15, 1977

Mr. & Mrs. Frank Buxton, Jr.  
Box 84  
Franconia, New Hampshire 03580

Dear Mr. & Mrs. Buxton:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FRANK, JR. AND ELIZABETH BUXTON	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

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Petitioners, Frank, Jr. and Elizabeth Buxton, Box 84, Franconia, New Hampshire 03580, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1965, 1966 and 1967. (File No. 01139). A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1976. Petitioner appeared by Albert E. Bernstein. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Whether petitioners, Frank, Jr. and Elizabeth Buxton, who had been domiciled in New York, changed their domicile to Franconia, New Hampshire, for the years 1965 and 1966.

FINDINGS OF FACT

1. Petitioners, Frank, Jr. and Elizabeth Buxton, claimed they were nonresidents of New York State for the years 1965, 1966 and 1967 and filed New York State nonresident income tax returns for said years.

2. The Income Tax Bureau issued a Statement of Refund Adjustment against petitioners on February 5, 1969, on the grounds that petitioners had not changed their residence to New Hampshire until September 1966. Accordingly, the Income Tax Bureau applied the refund claimed by petitioners for the year 1967 in the amount of \$935.00 against the additional tax computed to be due from petitioners for the year 1966 in the amount of \$276.40 and issued an adjustment refund to petitioners in the amount of \$658.60 plus interest.

3. The Income Tax Bureau issued a Notice of Deficiency dated October 1, 1969 against the petitioners for the year 1965 in the amount of \$817.66 plus interest, on the grounds that petitioners were residents of New York for the entire year.

4. Petitioners were residents of New York State in 1964 when they purchased a house and twenty acres of land in Franconia, New Hampshire. Petitioners continued to maintain an apartment at 301 East 60th Street, New York, New York for the balance of the year 1964, for the entire year 1965 and until September 1966 when petitioners moved out of their New York apartment. Petitioners asserted that during 1966 they attempted

to dispose of the apartment at 301 East 60th Street. Said apartment consisted of three rooms which were used as living quarters. Petitioner, Frank Buxton, Jr., claimed that he spent only 86 days in New York in 1965 and 34 days in New York in 1966.

5. During the years 1965, 1966 and 1967, petitioners voted in New Hampshire and petitioner Elizabeth Buxton, registered two motor vehicles in New Hampshire during said years.

6. All of the 1965 tax and wage statements attached to petitioners' 1965 New York return showed the address 301 East 60th Street, New York, New York and all of the 1966 tax and wage statements attached to petitioners' 1966 New York return showed three New York City addresses, including 301 East 60th Street, New York, New York. The petitioners listed their home address as 24 West 69th Street, New York, New York on their 1966 Federal income tax return, which was dated June 9, 1967.

#### CONCLUSIONS OF LAW

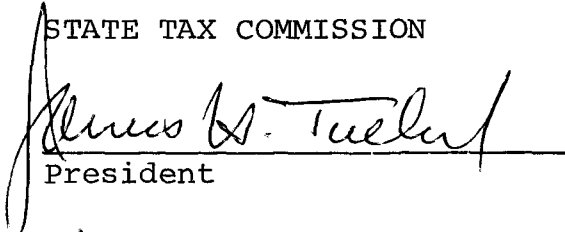
A. That although petitioners, Frank, Jr., and Elizabeth Buxton, purchased a house and land in New Hampshire in 1964, they did not show that they intended to change their New York domicile until they moved out of their New York apartment in September 1966. Petitioners were domiciled in New York State for the year 1965 and from January 1, 1966 until the end of September 1966 when they moved from their New York apartment.

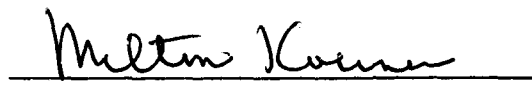
B. That petitioners were residents of New York State for the taxable year 1965 and from January 1, 1966 until the end of September 1966, within the meaning and intent of section 605(a)(1) of the Tax Law, since they maintained a permanent place of abode in New York State during said periods and spent in the aggregate more than 30 days in New York State during each such year.

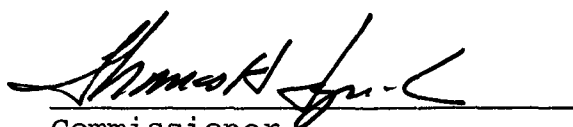
C. That the petition of Frank, Jr. and Elizabeth Buxton is denied, and the Statement of Refund Adjustment issued February 5, 1969 for the years 1966 and 1967, as well as the Notice of Deficiency issued October 1, 1969 for the year 1965 are sustained.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner