

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES P. CULLEN and TRAUDY CULLEN :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :

Taxes under Article ~~22~~ 22 of the :
Tax Law for the Year ~~1972~~ 1972 :
1972

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of November , 1977, He served the within

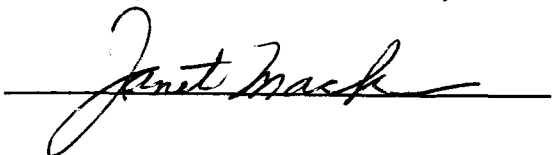
Notice of Decision by (certified) mail upon James P. Cullen and
Traudy Cullen ~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James P. Cullen and Traudy Cullen
652 73rd Street
Brooklyn, New York 11209

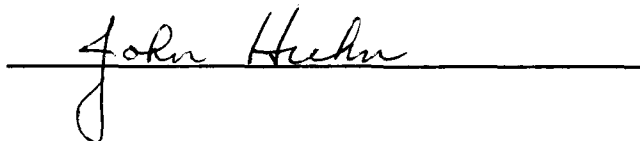
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative of~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

25th day of November , 1977.







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

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

November 25, 1977

James P. Cullen and Traudy Cullen
652 73rd Street
Brooklyn, New York 11209

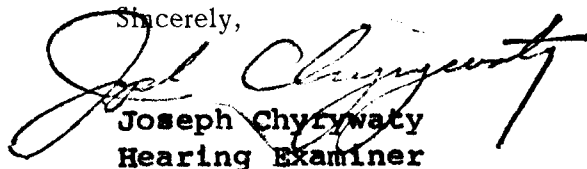
Dear Mr. and Mrs. Cullen:

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 ~~(4)~~ **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 Chyrywat
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative

Taxing Bureau's Representative

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, James P. Cullen and Traudy Cullen, based on a Statement of Audit Changes which held that James P. Cullen was a resident of New York State for personal income tax purposes for the year 1972. As such, his income was taxable by New York State for said year.

3. Petitioner James P. Cullen conceded that he was domiciled in New York State during 1972. However, he contended (a) that during said year he did not maintain a permanent place of abode in New York, (b) that he did maintain a permanent place of abode in New Jersey and (c) that he spent less than thirty days in New York. Therefore, he concluded that he was a nonresident for New York State personal income tax purposes.

4. During the year 1970, petitioner James P. Cullen entered the United States Army for a period of four years. Prior to his enlistment, he resided in and was a domiciliary of New York State.

5. During the year 1972, petitioner James P. Cullen was stationed at the Military Ocean Terminal in Bayonne, New Jersey. During said year, he resided with his aunt in South Orange, New Jersey. He contended that said residence constituted the maintenance of a permanent place of abode.

6. Petitioner James P. Cullen was married during the year 1971, while in the service. His wife resided with her parents in Massachusetts until the latter part of 1972, at which time she completed her education. She then moved to New York State and stayed with her husband's mother in Queens, New York.

7. During the year 1972, petitioners, James P. Cullen and Traudy Cullen, sought living quarters in Bay Ridge, Brooklyn. They did not find such living quarters until February or March of 1973. During this period, they lived apart during the workweek and traveled to Massachussets for the weekends.

8. Petitioner James P. Cullen spent less than thirty days in New York during the year 1972.

CONCLUSIONS OF LAW

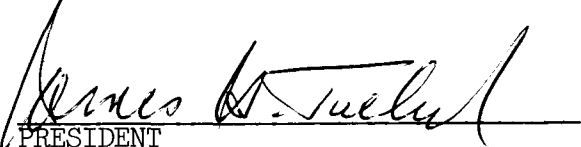
A. That petitioner James P. Cullen is a resident of New York State since his stay with his aunt in South Orange, New Jersey during the year 1972 did not constitute the maintenance of a permanent place of abode outside the State of New York, within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(e). Therefore, his income as determined by section 611 of the Tax Law is taxable for New York State income tax purposes.

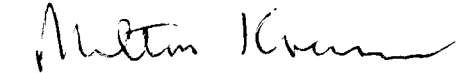
B. That the petition of James P. Cullen and Traudy Cullen is denied and the Notice of Deficiency issued March 31, 1975 is sustained, together with such interest as may be lawfully owing.

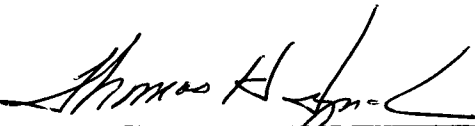
DATED: Albany, New York

November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER