

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
GEORGE GILLERT AND EMMA GILLERT

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) 1967, :  
1968 and 1969.

State of New York  
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within  
Notice of Decision by (certified) mail upon George and Emma Gillert  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: George and Emma Gillert  
Noxon Road  
Poughkeepsie, New York 12603  
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

29th day of September, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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GEORGE GILLERT AND EMMA GILLERT

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Tax Law for the Year(s) ~~or Period(s)~~ 1967, :  
1968 and 1969.

State of New York  
County of Albany

John Huhn , 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 29th day of September , 1977 , she served the within

Notice of Decision by (certified) mail upon Paul A. Baldovin, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Paul A. Baldovin, CPA

2 La Grange Avenue

Suite 201

Poughkeepsie, New York 12602

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

29th day of September , 1977.

Janet Mack

John Huhn



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

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

**September 29, 1977**

**George and Emma Gillert  
Noxon Road  
Poughkeepsie, New York 12603**

**Dear Mr. & Mrs. Gillert:**

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,

**John J. Sollecito  
Director of the Tax Appeals Bureau**

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	:	
	:	
GEORGE GILLERT and EMMA GILLERT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under:	:	
Article 22 of the Tax Law for the Years	:	
1967, 1968 and 1969.	:	

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Petitioners, George Gillert and Emma Gillert, Noxon Road, Poughkeepsie, New York 12603, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968 and 1969. (File No. 01467)

A formal hearing was scheduled before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for May 2, 1977 at 9:15 A.M. Prior to said hearing and in writing, petitioner's representative advised the State Tax Commission that the petitioners waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision, after due consideration of said record.

ISSUE

Whether petitioners, George Gillert and Emma Gillert, were resident individuals, of New York State for the years 1967, 1968 and 1969.

FINDINGS OF FACT

1. On April 14, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, George Gillert and Emma Gillert, imposing additional personal income tax for the years 1967, 1968 and 1969, upon the grounds that they were considered New York State residents and thus taxable on the full amount of their income. Accordingly, a Notice of Deficiency was issued in the amount of \$720.76, plus interest of \$103.86, for a total due of \$824.62.

2. Petitioners, George Gillert and Emma Gillert, timely filed New York State income tax resident returns for the years in issue.

3. In 1967, petitioner, George Gillert, was employed by Slattery Associates, Inc. His W-2 listed his address as Sylvan Lake Road, Hopewell Junction, New York, while the address on petitioners' New York State resident return listed P.O. Box 32, Enfield, Connecticut. Their total income was \$12,025.00. Total New York income was stated to be \$1,905.07. A refund of \$65.13 was made by the Income Tax Bureau for this year.

4. In 1968, petitioners' total income was \$9,995.00. Income received while in Connecticut was \$4,925.00, and income received while in New York was \$5,070.00. A refund of \$85.00 was made by the Income Tax Bureau for this year. Petitioner's address on the

New York State resident return was Noxon Road, Poughkeepsie, New York, c/o Ernie. His W-2, however, listed his address to be Hopewell Junction, New York.

5. In 1969, petitioners total income was stated to be \$8,141.61. Income in Jamaica was \$6,220.26, and total income in New York was \$1,921.35. Petitioner, George Gillert's W-2 listed other addresses as New York City and New York State. Petitioner's New York State resident return listed Noxon Road, Poughkeepsie, New York as their home address.

6. During the years in issue, George Gillert was employed as a site manager who went to various locations within and without the State wherever jobs took him. His wife accompanied him, as did their two children while they were youngsters. They would rent cottages by the week wherever employment was found, open bank accounts there and, when necessary obtain medical attention from local doctors. Petitioner, George Gillert, maintained a mailing address at Noxon Road, Poughkeepsie, New York. They never voted in any election, nor had they made any wills.

7. Petitioner, George Gillert, was employed at some time during the years in issue in New York State, and rented and occupied a residence in said State. At no time did the petitioners establish a permanent place of abode outside of New York State.

8. Petitioners, George Gillert and Emma Gillert, offered no documentary or other substantial evidence that they did not spend at least thirty days in New York State during George Gillert's period of employment in 1967, 1968 and 1969.

9. In 1966, petitioners, George Gillert and Emma Gillert, resided at Lakeview Park, Hopewell Junction, New York and filed New York State income tax resident returns for said year.

#### CONCLUSIONS OF LAW

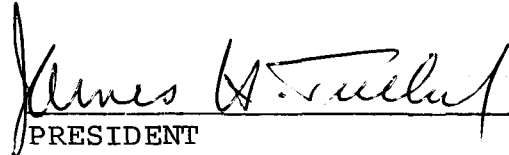
A. That petitioners, George Gillert and Emma Gillert, were domiciled in New York State during the years 1967, 1968 and 1969, and at no time did they effect a change of domicile. Therefore, since petitioners were domiciliaries of New York State during said years, spent more than thirty days in New York State in each of those years, and did not maintain a permanent place of abode outside of New York State in each of said years, they were subject to New York personal income tax as resident individuals on all their income, including income earned outside the State during the years in issue, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.


B. That the petition of George Gillert and Emma Gillert is denied and the Notice of Deficiency issued April 14, 1971 is sustained.

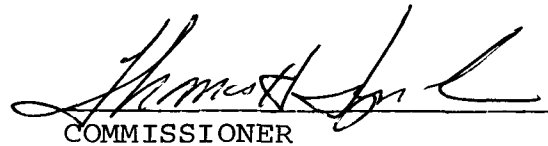
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER