

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT L. HAMILL, JR.

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) ~~XXXXXX~~ :  
1963 and 1964.

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 30th day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Robert L. Hamill, Jr.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Robert L. Hamill, Jr.  
Sky Step Farm  
Craig Road  
Clinton, New York 13323  
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

30th day of June, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT L. HAMILL, JR.

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~~ ~~xxxx~~ ~~xxxx~~ :  
1963 and 1964.

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 30th day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Sidney Meyers

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Sidney Meyers, Esq.  
51 Chambers Street  
New York, New York 10007

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

30th day of June, 1977.

Marsina Donnini

Janet Mock



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

June 30, 1977

TELEPHONE: (518) **457-1723**

Mr. Robert L. Hamill, Jr.  
Sky Step Farm  
Craig Road  
Clinton, New York 13323

Dear Mr. Hamill:

Please take notice of the  
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 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.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ROBERT L. HAMILL, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1963 and 1964.	:	
	:	

---

Petitioner, Robert L. Hamill, Jr. of Clinton, New York, 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 1963 and 1964. (File No. 01132).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on November 10, 1976 at 9:15 A.M. Petitioner appeared by Sidney Meyers, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUE

Whether the petitioner, Robert L. Hamill, Jr. was a resident of New York State for the taxable years 1963 and 1964, within the meaning of Section 605(a) of the Tax Law.

FINDINGS OF FACT

1. In 1961, petitioner, Robert L. Hamill, Jr., then 21 years old, was living with his parents in the family residence at Longwood Crossing, Cedarhurst, Long Island. The family also maintained a Manhattan apartment at 700 Park Avenue.

2. In September, 1961, petitioner was offered and he accepted full-time employment with Krim-Ko Corporation, an Illinois-based manufacturing firm. He thereupon purchased an automobile, "....loaded all of [his] worldly possessions at that point in the car...."and drove out to Clarendon Hills, Illinois, where he took up residence in the home of his grandmother and an aunt.

3. Petitioner worked for Krim-Ko in Illinois, spending a portion of his time travelling to Krim-Ko sales territories outside of Illinois until the close of 1962. Towards the end of that year, he was assigned the company's New England territory. Petitioner's sister and brother-in-law had leased a ski-house in Marlboro, Vermont, and during the first half of 1963, petitioner spent his week-ends at the ski-house, travelling throughout the northeast during the rest of the week. Petitioner was not legally obligated on the lease. He closed out his Illinois checking account, but did not open a Vermont account. Instead, he transferred his funds to a New York City bank. His Federal and state tax returns for 1963 gave the Park Avenue address as his residence. His 1964 returns state his residency as "Tuckerstown, Bermuda since 12/24/63." Throughout this period, however, petitioner continued to receive his mail and "important messages" at the Manhattan address.

4. Petitioner remained in the New England area until July 15, 1963, when, anticipating induction into the armed services, he took "a leave of absence" from Krim-Ko and flew to England for a vacation. In September, 1963, petitioner's New York draft board notified him that he had been rejected for induction whereupon he flew to Bermuda to visit with his mother and then to Fort Lauderdale, Florida, where the family yacht was berthed. Notwithstanding his rejection for induction, petitioner never returned to Krim-Ko. Instead, he remained on the yacht which was docked in Florida and from time to time in the Bahamas until July, 1964, when he married a resident of Bermuda. The couple lived in the Bermuda residence of petitioner's parents until September, 1964.

5. Sometime in September, 1964, petitioner and his wife relocated to Lake Tahoe, California, where petitioner invested in and worked for a local land development firm.

6. Petitioner testified that from the time he left New York in 1961 until 1965, when he returned to take up a permanent residence, he never intended to resume his New York State residence.

#### CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof with respect to his nonresident status within the meaning of Section 605 of the Tax Law.

B. That Section 605(a)(1) of the Tax Law, as relevant here, defines a resident individual as one "who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere...."

C. That petitioner's domicile of origin in New York State is presumed to have continued until the acquisition of a new domicile, and that petitioner has the burden of proof with respect to the claimed change of domicile. Bodfish v. Gallman, 50 AD, 2d 457, 378 N.Y.S. 2d 138 (1976).

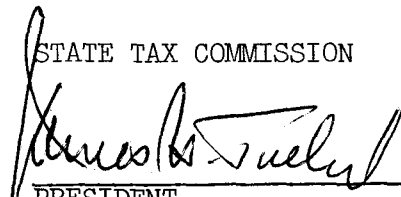
D. That notwithstanding petitioner's residence in Illinois, Vermont and aboard the family yacht in Florida and the Bahamas during 1963 and 1964, the evidence fails to establish that petitioner intended to make any one of the aforementioned residences his fixed and permanent home"...with the range of sentiment, feeling and permanent association..."required to effect a change of domicile.

E. That petitioner was therefore a domiciliary of New York State and maintained no permanent place of abode in any other state during 1963 and 1964.

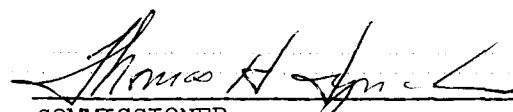
F. That domicile plus failure to maintain a permanent place of abode elsewhere provides a basis for taxation, and presence within New York State is not necessary in accordance with the meaning and intent of Section 605(a)(1) of the Tax Law.

G. That the petition and claims for refund of Robert L. Hamill, Jr. are denied.

DATED: Albany, New York  
June 30, 1977

STATE TAX COMMISSION  
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER