

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD R. MARSH AND JOSEPHINE R. MARSH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(x)~~ 22 of the :  
Tax Law for the Year ~~(xxxxxx)~~ 1971. :

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 22nd day of August, 1977, she served the within Notice of Decision by (certified) mail upon Donald R. & Josephine R. Marsh (~~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. Donald R. Marsh  
24 Brierbrook Street  
Milton, Massachusetts 02186

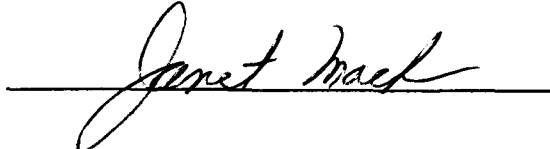
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 (~~representative of~~) (~~xxxxxx~~) petitioner.

Sworn to before me this

22nd day of August, 1977.

  
Marsina Donnini

  
Janet 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

August 22, 1977

Mr. & Mrs. Donald R. Marsh  
24 Brierbrook Street  
Milton, Massachusetts 02186

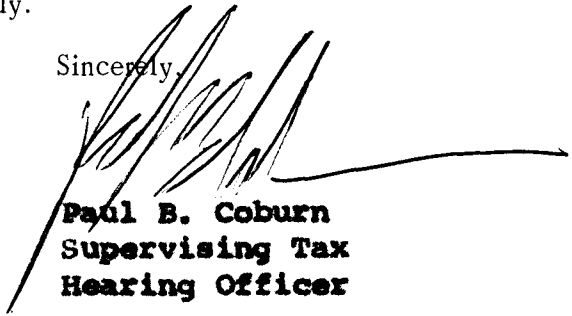
Dear Mr. & Mrs. Marsh:

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,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
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	:	
DONALD R. MARSH AND JOSEPHINE R. MARSH	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1971.	:	

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Petitioners, Donald R. Marsh and Josephine R. Marsh, 24 Brierbrook Street, Milton, Massachusetts 02186, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971. (File No. 14103).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1977, at 2:45 P.M. Petitioner, Donald R. Marsh, appeared pro se and for his wife Josephine R. Marsh. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners, Donald R. Marsh and Josephine R. Marsh, were liable for New York State personal income taxes as resident individuals for the period January 1 to August 31, 1971?

1

FINDINGS OF FACT

1. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners indicating a deficiency of \$4,411.22, plus interest, for the 1971 tax year. On the same date the Bureau issued a Statement of Audit Changes reading in pertinent part as follows:

"Since you worked in New York State for more than 30 days in the year 1971, you are considered to be a New York State resident for the period January 1 through August 31, 1971. From September 1 through December 31, 1971 you were a non-resident of New York State for actual permanent change took place as of September 1, 1971."

2. On August 4, 1965, petitioners vacated their apartment at 109 Willow Street, Brooklyn, New York, to move to Japan. Prior to moving to Japan, petitioners had lived in New York for eight years.

3. Petitioner, Donald R. Marsh, was employed by Morgan Guaranty Trust Company in both New York and Japan.

4. Petitioners state that when they left New York in 1965, they had no intention to return. In their petition they write: "When we moved to Japan it was our intention, when and if we returned to the New York area, to move to Connecticut since with growing children we did not want to live in the City and Connecticut was our choice because we have family living in Greenwich."

5. On August 31, 1971, petitioners returned to the United States, having lived in Japan for six years. Upon landing in New York, petitioners went directly from John F. Kennedy International Airport to Connecticut. From September 1, to December 31, 1971, petitioners lived at 75 Highline Trail, Stamford, Connecticut. During this period, Mr. Marsh worked at Morgan Guaranty Trust Company in New York City.

6. Mr. Marsh paid nonresident income taxes for the period September 1 to December 31, 1971.

CONCLUSIONS OF LAW

A. That petitioners, Donald R. Marsh and Josephine R. Marsh, were domiciliaries of New York State until August 31, 1971, at which time they physically located themselves in Connecticut with the bona fide intention of making their fixed and permanent home there. 20 NYCRR 102.2(d)(2)

B. That in the 1971 tax year petitioners, Donald R. Marsh and Josephine R. Marsh, were not resident individuals of New York State, as that term is defined in Sec. 605(a)(1) of the New York Tax Law. From January 1 to August 31, 1971, during which period petitioners were New York domiciliaries, they maintained no permanent place of abode in New York State, maintained a permanent

place of abode elsewhere, and spent in the aggregate not more than thirty days in New York State. Nor were petitioners resident individuals as that term is defined in Sec. 605(a)(2) of the Tax Law.

C. That the petition of Donald R. Marsh and Josephine R. Marsh is granted and the Notice of Deficiency issued January 27, 1975 is cancelled.

DATED: Albany, New York  
August 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER