

Aug. 26, 1977

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD L. SCHUMAN :
for a Redetermination of a Deficiency or : **DECISION**
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1968 through 1972. :

Petitioner, Edward L. Schuman, residing at 340 E. 19th Street, New York, New York 10003, has 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 1968 through 1972. (File No. 10596).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 14, 1976 at 2:45 P.M. Petitioner appeared by Lester H. Hirsh, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. of counsel).

ISSUES

I. (Whether the claim for deficiency is barred by the Statute of Limitations and for lack of jurisdiction.) (D)

II. (Whether the petitioner was a New York resident for (2)
income tax purposes) during the years 1971 and 1972.

III. (Whether the petitioner should receive credit for
income taxes paid) during the taxable years 1968 through 1972 to (3)
the District of Columbia, the State of Michigan, the City of
Detroit and the City of New York.)

FINDINGS OF FACT

1. The petitioner timely filed New York State income tax nonresident returns for the tax years 1968, 1969, 1970, 1971 and 1972.

2. Pursuant to Consent (form IT-75) executed by the petitioner on July 23, 1971 and by the New York State Tax Commission on August 12, 1971, it was consented to and agreed, in part, that the amount of any personal income taxes due under returns made by the petitioner for the taxable years ended December 31, 1968 and December 31, 1969 "may be assessed at any time on or before 1 year following close of proceedings for 1965, 1966 and 1967."

3. Pursuant to Consent (form IT-75) executed by the petitioner on June 2, 1973 and by the New York State Tax Commission on June 14, 1973, it was consented to and agreed, in part, that the amount of any personal income taxes due under returns made by the petitioner for the taxable years ended December 31, 1970 and December 31, 1971 "may be assessed at any time on or before one year following the close of proceedings for the years 1965, 1966 and 1967."

4. On July 12, 1973, a letter was addressed to the petitioner, signed by Hearing Officer L. Robert Leisner on behalf of the State Tax Commission, enclosing a copy of the decision of the State Tax Commission, dated July 12, 1973, In the Matter of the Petition of Edward L. Schuman for Redetermination of Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1965, 1966 and 1967.

5. Said decision made the determination, in substance, that the petitioner herein was a resident of the State of New York for the years 1965, 1966 and 1967 "by virtue of the fact that he was domiciled in New York, maintained a permanent place of abode in New York and spent more than 30 days in the State" and denied his petition for redetermination of deficiency or for refund of personal income tax for the years 1965, 1966 and 1967.

6. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency with respect to the taxable years 1968 through 1972, addressed to the petitioner at "28738 Rockledge Farmington, Michigan 48024," assessing an aggregate deficiency for said years 1968, 1969, 1970, 1971 and 1972 of \$18,957.48 with interest thereon of \$4,261.05, said deficiency with interest totaling \$23,218.35.

7. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes with respect to the taxable years 1968

through 1972, also addressed to the petitioner at "28738 Rockledge Farmington, Michigan 48024," stating as explanation for the aforesaid deficiency with interest of \$23,218.53 that "Pursuant to the Decision of the Tax Commission dated July 12, 1973, you are held to be a resident of New York State and are subject to personal income tax on your total income as reported on your 1968 through 1972 tax returns."

8. The petitioner, Edward L. Schuman, timely filed a petition for redetermination of deficiency or for refund of personal income taxes for the years 1968, 1969, 1970, 1971 and 1972.

9. There is no evidence in the record to establish that the aforesaid Notice of Deficiency, issued September 30, 1974 or the aforesaid Statement of Audit Changes, dated the same day, were mailed by certified or registered mail.

10. The petitioner's New York State income tax resident return 1973 was mailed on behalf of the petitioner by Lester H. Hirsh, Esq., attorney for the petitioner, in April 1974 and stated the petitioner's address to be "340 E. 19 St., New York, N.Y. 10003."

11. (a) From January 1, 1971 to March 19, 1971, the petitioner lived in Detroit, Michigan.

(b) From March 19, 1971 to on or about the beginning of November of 1972, the petitioner lived in Washington, D.C.

(c) From on or about the beginning of November 1972 to April 1, 1973, the petitioner lived in Farmington, Michigan, a suburb of Detroit.

(d) During said period of January 1, 1971 to April 1, 1973, the petitioner did not have a place of abode in New York.

12. During each of the taxable years 1971 and 1972, the petitioner spent in the aggregate less than thirty days of each of said taxable years in New York.

13. From March 19, 1971 to on or about the beginning of November 1972, the petitioner was on leave of absence from his employer, the Walter Reade Organization, Inc. "without pay" and was a full time active employee and staff member of the Democratic nominee for the Presidency.

14. The petitioner filed a District of Columbia resident, individual tax return for 1971 and a Michigan individual income tax return as a resident for 1972.

15. The petitioner was a resident of New York for income tax purposes during the taxable years 1968, 1969 and 1970.

16. From on or about October 2, 1972 to on or about April 1, 1973, the petitioner was retained by the Walter Reade Organization, Inc. as a consultant and in that capacity his services included traveling to and inspecting theatre facilities in a number of states and in some foreign countries, issuing reports to the Organization's principal office in Oakhurst, New Jersey and returning to said office for consultations and conferences during said period.

17. On April 1, 1973, the petitioner "again became a vice president" of the Walter Reade Organization, Inc. on a full time basis and was assigned to its New York City office, although he also worked out of the central office in New Jersey.

18. The petitioner was a resident of New York for income tax purposes during the taxable year 1973.

19. The deficiencies assessed against the petitioner for the years 1970 through 1972, pursuant to the aforesaid Notice of Deficiency issued September 30, 1974 and the aforesaid Statement of Audit Changes dated the same day, did not credit the petitioner with personal income tax payments made by the petitioner during said years to the District of Columbia, the State of Michigan, the City of Detroit and the City of New York as follows:

	<u>D.C.</u>	<u>Detroit</u>	<u>Michigan</u>	<u>N.Y.C.</u>
1968		\$420.00	\$ 791.20	\$ 88.00
1969		603.14	682.00	100.00
1970		860.00	1,040.00	102.00
1971	\$2,273.00	99.80	972.75	52.00
1972		36.00	1,177.00	65.00

CONCLUSIONS OF LAW

A. That although the Decision of the State Tax Commission, dated July 12, 1973, did not become final until after the mailing of the Notice of Deficiency issued September 30, 1974, the claim

for deficiency against the petitioner for the taxable years 1968 through 1972 as therein set forth is nevertheless barred by the Statute of Limitations and for lack of jurisdiction, inasmuch as the said Notice of Deficiency was addressed and mailed to the petitioner at "28738 Rockledge, Farmington, Michigan" instead of to the petitioner's last known address, "340 E. 19 St., New York, N.Y.", given in the last return filed by him, namely his New York State income tax resident return for 1973, filed in April of 1974.

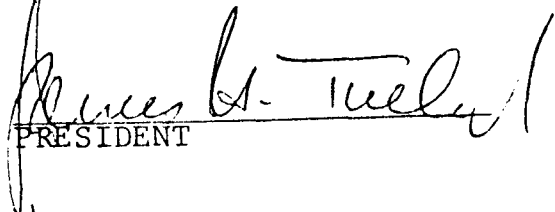
B. That the claim for deficiency for the years 1968 through 1972 set forth in the Notice of Deficiency dated September 30, 1974 is also barred by the Statute of Limitations and for lack of jurisdiction for the further reason that there is no evidence in the record to establish that the said Notice of Deficiency was mailed to the petitioner by certified or registered mail.

C. That the petitioner was a resident of the State of New York for income tax purposes for the years 1968, 1969 and 1970, but was not a resident of the State of New York for income tax purposes for the taxable years 1971 and 1972 since he did not maintain a place of abode in New York during either of said years but, on the contrary, maintained places of abode elsewhere during each of said years, spent in the aggregate less than 30 days in each of said taxable years in New York State and did not earn any income in New York during either of said years.

D. That the petition of Edward L. Schuman is granted and the Notice of Deficiency issued September 30, 1974 is cancelled.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER