

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES T. & JUDITH J. SHERWIN

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)~~ 1971.:

State of New York
County of Albany

Bruce Batchelor, 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 4th day of March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon James T. & Judith J.
Sherwin (~~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. James T. Sherwin
271 Central Park West
New York, New York 10024

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~~
~~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

4th day of March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

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

Mr. & Mrs. James T. Sherwin
271 Central Park West
New York, New York 10024

Dear Mr. & Mrs. Sherwin

Please take notice of the **DECISION**
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,

Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~RECEIVED BY SUPERVISOR~~

Taxing Bureau's Representative:

FINDINGS OF FACT

1. Petitioner, James T. Sherwin and his wife, Judith J. Sherwin, filed a New York State nonresident income tax return (IT-203) covering the period January 1, 1971 through July 31, 1971. They also filed a New York State resident income tax return for 1971 for the period August 1, 1971 through December 31, 1971. Petitioners claimed they were New York State residents for the period August 1, 1971 through December 31, 1971 and that they were residents of Belgium for the balance of the year. In accordance with their contention, they reported only that income attributable to New York State sources on the New York nonresident income tax returns.

2. On July 28, 1975, the Income Tax Bureau issued a Statement of Audit Changes imposing additional personal income tax upon the grounds that petitioner, James T. Sherwin, had not effected a change of domicile and that he lived in New York State for a period exceeding thirty days during 1971. In accordance with the aforesaid Statement, it issued a Notice of Deficiency for \$1,595.93 which included interest.

3. On September 13, 1969, petitioners, James T. and Judith J. Sherwin and their two children moved to Belgium, leaving their residence at 350 Central Park West, New York, New York. The petitioners moved to Belgium because petitioner, James T. Sherwin, an attorney was given an indefinite work assignment in Belgium for the G A F Corporation. He was reassigned to the United States in 1971.

4. Petitioners resided in Belgium until August 1, 1971 at which time they returned to New York State and set up residency at 27 West 86th Street, New York, New York.

5. As residents of Belgium, they were subject to and paid Belgian taxes on income earned during their entire stay in Belgium.

6. Petitioners contended that they had given up their New York State domicile for the time they lived abroad and that it was their intention to remain in Belgium indefinitely.

7. After their move to Belgium, petitioners resided at 590 Avenue de la Reine Astrid, Kraainem, renting a house for a three-year term. Petitioner, James T. Sherwin, had a United States passport and stated that he, at no time, intended to relinquish his United States citizenship. He had a work visa and identification card which was renewable each year.

8. Petitioner, James T. Sherwin, executed a will in 1965, indicating New York as his residence, and did not change said will upon going abroad.

9. Petitioners indicated that in their opinion the Notice of Deficiency issued by the Income Tax Bureau was unconstitutional.

CONCLUSIONS OF LAW

A. That petitioners, James T. and Judith J. Sherwin, failed to effect a change of domicile from New York to Belgium.

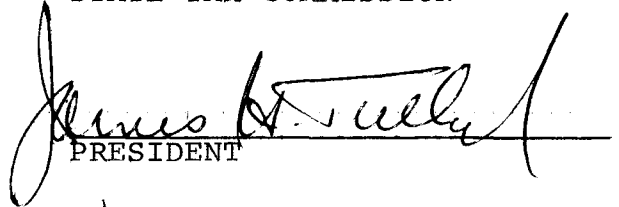
B. That during the year 1971, petitioners lived in New York State for a period exceeding thirty days, and in accordance with section 605(a)(1) of the Tax Law, were statutory residents whose entire income for 1971 was subject to New York State income tax.

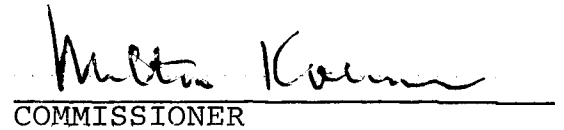
C. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that sections 631 and 632 of the Tax Law are constitutional to the extent that they relate to the imposition of income tax liability on the petitioner.

D. That the petition of James T. and Judith J. Sherwin is denied, and the Notice of Deficiency issued July 28, 1975 is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER