

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROY B. SIMPSON AND EDITH SIMPSON

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(s) ~~XXXXXX~~ 1969  
and 1970.

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 19th day of January, 1977, she served the within Notice of Decision by (certified) mail upon Roy B. Simpson and Edith Simpson ~~(representative of the)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Roy B. Simpson & Edith Simpson  
Vista Drive, Indian Harbor  
Greenwich, Connecticut

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)~~ ~~XXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

19th day of January, 1977

Bruce Batchelor

Janet Back

STATE OF NEW YORK  
STATE TAX COMMISSION

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of Personal Income  
Taxes under Article ~~(\*)~~ 22 of the  
Tax Law for the Year(s) ~~XXXXXXX(s)~~  
1969 and 1970.

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 19th day of January, 1977, she served the within Notice of Decision by (certified) mail upon Peter W. Schmidt (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Peter W. Schmidt, Esq.  
Wilkie, Farr & Gallagher, Esqs.  
1 Chase Manhattan Plaza  
New York, New York 10005  
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

19th day of January, 1977.

Bruce Batchelor

Janet Mack



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

January 19, 1977

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

Roy B. Simpson & Edith Simpson  
Vista Drive, Indian Harbor  
Greenwich, Connecticut

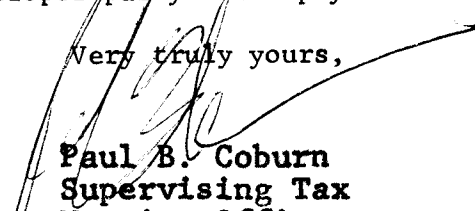
Dear Mr. & Mrs. Simpson:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(~~s~~) **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

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In the Matter of the Petition  
of  
ROY B. SIMPSON and EDITH SIMPSON  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years  
1969 and 1970.

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DECISION

Petitioners, Roy B. Simpson and Edith Simpson, Vista Drive, Indian Harbor, Greenwich, Connecticut, filed a petition under Article 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the years 1969 and 1970. (File No. 01235). Said deficiency for 1969 and 1970, was asserted on January 28, 1974, as part of a deficiency for the years 1966 through 1970 in the amount of \$225,361.75, plus penalty of \$266.98 and interest of \$52,685.41 for a total of \$278,314.12. The amounts applicable to 1969 and 1970 which are contested, are for 1969: \$214,614.71 plus interest of \$48,345.44, and for 1970: \$1,067.91 plus penalty of \$266.98 and interest of \$178.48.

A hearing was duly held on June 15, 1976, at the offices of the State Tax Commission, Two World Trade Center, New York, New York,

before Nigel G. Wright, Hearing Officer. The petitioners appeared by Wilkie, Farr and Gallagher, (Charles I. Kinson, Esq. and Peter W. Schmidt, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is to determine the date on which petitioners, Roy B. Simpson and Edith Simpson, changed their domicile from New York to Connecticut and more precisely to determine whether the change was made prior to or after August 6, 1969, the date when Mr. Simpson realized a very large capital gain on the sale of shares of stock in a certain corporation with which he had had a business connection.

#### FINDINGS OF FACT

1. From about 1964 to 1969 petitioners, Roy B. Simpson and Edith Simpson, resided in a cooperative apartment located at 655 Park Avenue, New York City. Petitioners concede that prior to 1969 they were domiciliaries of New York State.

2. Prior to 1969, Mr. Simpson had been in the textile business. For at least fifteen years he had been associated with a Mr. Robert A. Levinson in the formation and operation of certain firms in that

industry. In 1969, Mr. Simpson was Chairman of the Executive Committee of Duplan and Mr. Levinson was its Chief Executive Officer. A controlling interest in the shares of Duplan was held by a holding company, Saarb Inc., of which Mr. Levinson and Mr. Simpson were controlling shareholders. These shares were restricted by the right of the corporation and other shareholders to a first-refusal to any offer of sale.

3. On Sunday, March 2, 1969, an article appeared in the New York Times financial section featuring Mr. Robert A. Levinson and his connection with Duplan. This led to discussions and ill feeling between Mr. Simpson and Mr. Levinson, and Mr. Simpson decided to leave Duplan. Mr. Simpson received his last check from Duplan in May or June, 1969. On August 6, 1969, he formerly resigned his positions as Chairman of the Executive Committee and as a Director of Duplan. On the same date, Mr. Simpson terminated his ownership interests in Duplan by the sale of 212,831 shares back to the corporation at \$13.87 a share.

4. Since 1969, Mr. Simpson has not been employed in New York. He is presently an executive for a major corporation with its headquarters in Connecticut.

5. Petitioners had adopted a daughter in June, 1964. The girl attended Christ Church Nursery School which was close to

petitioners' apartment. In 1968, the girl was found to be partially deaf which caused great difficulty in attending to the child when outside of the apartment in New York City. Mr. and Mrs. Simpson then decided that the best interests of the child would be served by enrolling her at the Daycroft School, a private school in Connecticut. This was first done in April, 1969, for the two-month period, April and May. In September, the girl was enrolled for the full 1969-1970 school year. Later, Mr. Simpson was elected to the Board of Trustees of that school.

6. For several years prior to 1969, petitioners had owned a home at Knollwood Drive in Greenwich, Connecticut. This they used during the summer only. This house was sold and vacated in May, 1969. On May 1, 1969, petitioners closed title and took possession of a house on Vista Drive, Indian Harbor in Greenwich, Connecticut. This had been previously contracted for and cost over \$300,000.00. During the summer and fall of 1969 substantial modifications were made in this house to make it more suitable for winter living. The house has since become a showplace being featured on the cover of House and Garden magazine for May, 1974.

7. On May 1, 1969, at the time of the title closing on their house, Mr. and Mrs. Simpson applied for the right to vote in Connecticut and were than admitted as electors of the Town of Greenwich.

8. Around March, 1969, petitioners moved out of their apartment in New York City and moved to their house on Knollwood Drive in Greenwich. On the advice of his attorney, Mr. Simpson on or before August 5, 1969, sold the proprietary lease and the accompanying 318 shares of stock to his investment counselor, John D. Braine, with a guarantee against loss, and the Board of Directors of the building was notified that neither Mr. Simpson nor Mr. Braine would occupy the apartment. Mr. Braine in turn appointed Albert B. Ashforth Inc., the managing agents of the building as his own agent to sell the lease and stock. The apartment was finally sold to a person who would occupy it in February, 1970. Mr. Simpson paid all utility bills and the maintenance charges of about \$500.00 a month until February, 1970.

9. On June 12, 1970, petitioners filed a tax return with the State of Connecticut showing thereon the capital gain on the sale of the Saarb Inc. stock.

10. Petitioners, Roy B. Simpson and Edith Simpson, spent less than 183 days in New York State during each of the years 1969 and 1970.

11. Petitioners, Roy B. Simpson and Edith Simpson, were advised by their accountant that they were not required to file a New York State personal income tax return for the year 1970.



CONCLUSIONS OF LAW

A. That petitioners, Roy B. Simpson and Edith Simpson, changed their domicile from New York State to Connecticut in the spring of 1969 on approximately May first and prior to the sale of petitioner, Roy B. Simpson's stock on August 6, 1969.

B. That since petitioner, Roy B. Simpson, changed his domicile to Connecticut on May 1, 1969, and spent less than 183 days in New York State during each of the years 1969 and 1970, therefore, he became a nonresident on May 1, 1969, and the gain realized by him on the sale of stock on August 6, 1969, was not subject to New York State personal income tax nor was any other income derived other than from New York sources after May 1, 1969, subject to said tax.

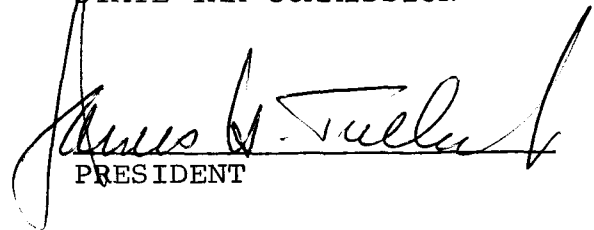
C. Petitioners, Roy B. Simpson and Edith Simpson, had reasonable cause for failing to file a New York State personal income tax return for the year 1970 and, therefore, the penalty imposed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Roy B. Simpson and Edith Simpson is granted to the extent that it is determined that they changed their domicile from New York to Connecticut on May 1, 1969, and

the penalty is waived; that the Income Tax Bureau is hereby directed to accordingly modify the Statement of Audit Changes and Notice of Deficiency issued January 28, 1974, and that except as so granted the petition is in all other respects denied.

DATED: Albany, New York  
January 19, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER