

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD L. SMITH and ETHEL M. SMITH

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)~~ 1970.:

State of New York
County of Albany

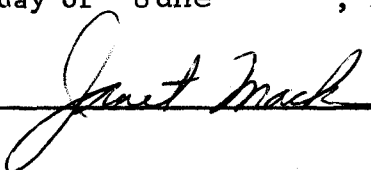
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Edward L. Smith &
Ethel M. Smith (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Edward L. Smith
100 Bay Colony Drive
Fort Lauderdale, Florida 33308

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

24th day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD L. SMITH and ETHEL M. SMITH

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 ~~1969~~ 1970.

AFFIDAVIT OF MAILING

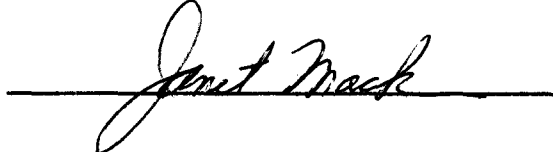
State of New York
County of Albany

Violet Walker, 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 24th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Robert S. Stewart & J. Lawrence Paltrowitz (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert S. Stewart & J. Lawrence Paltrowitz, Esqs. Caffry, Pontiff, Stewart, Rhodes & Judge 10 Harlem Street Glens Falls, New York 12801 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

24th day of June, 1977.







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 24, 1977

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

Mr. & Mrs. Edward L. Smith
100 Bay Colony Drive
Fort Lauderdale, Florida 33308

Dear Mr. & Mrs. Smith:

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,

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 Petitions	:	
of	:	
EDWARD L. SMITH and ETHEL M. SMITH	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year 1970.	:	
	:	

Petitioners, Edward L. Smith and Ethel M. Smith, 100 Bay Colony Drive, Fort Lauderdale, Florida 33308, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 01515).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on November 8, 1976 at 9:30 A.M. Petitioners appeared by Caffry, Pontiff, Stewart, Rhodes and Judge, Esqs. (Robert S. Stewart, Esq. and J. Lawrence Paltrowitz, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioners, Edward L. Smith and Ethel M. Smith, were resident individuals of New York State for the year 1970.

FINDINGS OF FACT

1. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Edward L. Smith, in the amount of \$100,133.74, plus interest of \$11,695.62 for a total of \$111,829.36, on the grounds that his domicile had not changed. Therefore, all income reported for Federal tax purposes was held taxable to New York State. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$111,829.36.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Refund Adjustment against petitioner, Ethel M. Smith, whereby all income reported for Federal tax purposes was held taxable to New York State. Computation resulted in a refund of \$16,355.09, plus interest of \$1,504.18, for a total of \$17,859.27, paid to petitioner, Ethel M. Smith.

3. Petitioners, Edward L. Smith and Ethel M. Smith, filed individual New York State income tax returns for the period January 1, 1970 to August 18, 1970. Edward L. Smith claimed a refund of \$25,225.45, while Ethel M. Smith claimed a refund of \$25,495.00. They also filed individual New York State nonresident returns for the period August 19, 1970 to December 31, 1970, in which additional income was received and on which they claimed no tax was due.

4. In December of 1969, petitioners, Edward L. Smith and Ethel M. Smith, purchased lot #30, Bay Colony, Fort Lauderdale, Florida for approximately \$62,000.00, and constructed thereon a home for approximately \$131,000.00. They furnished it with furniture purchased locally for approximately \$50,000.00. A Certificate of Occupancy from the City of Fort Lauderdale, Florida was issued to petitioner, Edward L. Smith, on August 12, 1970 as a single residence at a value of \$220,000.00, plus a garage valued at \$3,000.00.

5. On July 25, 1970, petitioners, Edward L. Smith and Ethel M. Smith and family moved to Florida. Personal effects were shipped by Greyhound Buses. Their children, Sandra Lee Smith and Donald E. Smith, flew to Florida to meet their riding horses which were being trucked to Florida. On August 12, 1970, the family moved into their new residence.

6. On September 14, 1970, petitioners, Edward L. Smith and Ethel M. Smith, as per their agreement of January 2, 1970 with the Norton Company of Worcester, Massachusetts, sold their stock in Sardon International, Inc. to the Norton Co. There was a distribution of assets in exchange for stock. As a result, on September 14, 1970, Edward L. Smith received a 1970 Lincoln Continental automobile valued at \$9,886.75. On December 14, 1970, he received \$1,434,867.22 and on December 21, 1970, he received \$5,884.17.

On December 14, 1970, Ethel M. Smith received a cash distribution of \$183,419.00 and \$542.72 on December 21, 1970.

7. In 1970, petitioners, Edward L. Smith and Ethel M. Smith, owned a residence in Granville, New York valued at \$90,000.00. The furnishings were valued at approximately \$25,000.00. Utility and phone service were maintained throughout the year. A bank account in New York State was also maintained which showed a balance of \$3,400.00 on August 18, 1970. A caretaker was put in charge of the residence. The house was sold in July of 1971.

8. Petitioner, Edward L. Smith, spent the following days in New York State in the year 1970:

January 6 to February 14	- 40 days
March 4 to April 16	- 44 days
April 28 to July 26	- 90 days
September 3 to September 19	- 17 days
October 14 to October 20	- 7 days
Total Days	- 198 days

9. Petitioner, Ethel M. Smith, spent the following days in New York State in the year 1970:

January 6 to February 21	- 47 days
March 4 to April 16	- 44 days
April 28 to July 26	- 90 days
October 14 to October 20	- 7 days
Total Days	- 188 days

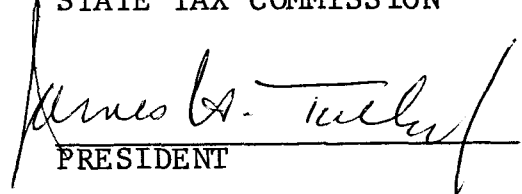
CONCLUSIONS OF LAW

A. That although petitioners, Edward L. Smith and Ethel M. Smith changed their domicile to Florida in July 1970, they were subject to New York personal income tax as resident individuals on all their income during said year in accordance with the meaning and intent of section 605(a)(2) of the Tax Law since they maintained a permanent place of abode for the entire year in New York State and spent more than 183 days in New York State in 1970.

B. That the petitions of Edward L. Smith and Ethel M. Smith are denied.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER