

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE TULLY

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) ~~xxxxxx~~ 1967;

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of February , 1977, he served the within
Notice of Decision by (certified) mail upon Theodore Tully
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Theodore Tully
c/o Joseph A. Gallo, CPA
1332 Forest Avenue
Staten Island, New York 10302
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

28th day of February , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE TULLY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (22) of the :
Tax Law for the Year (1967) 1967.:

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 28th day of February, 1977, she served the within
Notice of Decision by (certified) mail upon Murray Appleman, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Murray Appleman, Esq.
225 Broadway
New York, New York

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

28th day of February, 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

February 28, 1977

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

Mr. Theodore Tully
c/o Joseph A. Gallo, CPA
1332 Forest Avenue
Staten Island, New York 10302

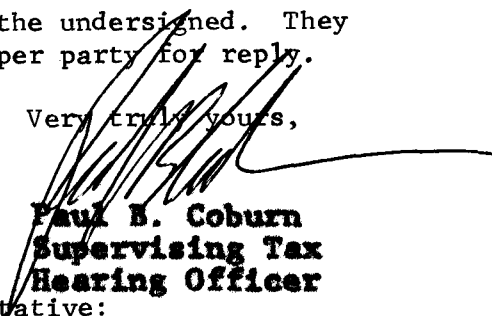
Dear Mr. Tully:

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

Please take further notice that pursuant to
Section(**x**) **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 Petition	:	
of	:	
THEODORE TULLY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1967.	:	

Petitioner, Theodore Tully, c/o Joseph A. Gallo, CPA, 1332 Forest Avenue, Staten Island, New York 10302, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967. (File No. 01233).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1976, at 11:55 A.M. Petitioner appeared by Murray Appleman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Whether petitioner, Theodore Tully, was a resident individual for income tax purposes for the year 1967.

FINDINGS OF FACT

1. In 1968, petitioner, Theodore Tully, filed a New York State income tax nonresident return for 1967. On May 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing additional New York State personal income tax for the year 1967 on the ground that the petitioner retained domicile in New York State and therefore, was liable for income tax on the total income earned within and without New York State. Accordingly, on May 26, 1969, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$2,022.40, plus interest of \$86.64, less overpayment on the return of \$725.44, for a total due of \$1,383.60.

2. On August 1, 1966, petitioner, Theodore Tully, became associated with Pepsico, Inc. as their international systems manager, leaving the General Foods Company after some four years service. He traveled internationally for both firms. In 1962, he was in England; in 1963, California, Illinois and Indiana; in 1964, Denmark and Italy. From January 1, 1967 to April 15, 1967, petitioner worked at the Purchase, New York office of Pepsico. On April 15, 1967, he was assigned to Johannesburg, South Africa. He returned to New York State on July 6, 1967, for his father's funeral and remained until August 4, 1967, staying at his parents'

Bayside, New York residence. Throughout all the years in issue, he used their Bayside address as a mail drop. However, he shared an apartment "where he hung his hat" with a friend in Connecticut until 1969, at which time he removed a hi-fi set, the only thing of value in the place.

3. Petitioner, Theodore Tully, had a withholding wage and tax statement from his employer for 1967, which listed Bayside, New York as his address. He filed no Federal exemption for credit for foreign taxes or income from foreign sources.

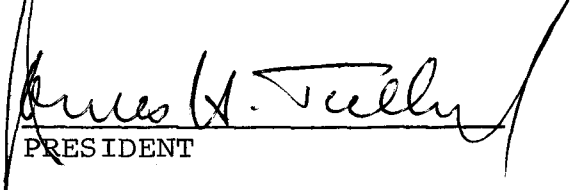
CONCLUSIONS OF LAW

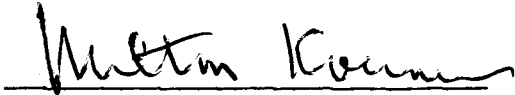
A. That petitioner, Theodore Tully, was domiciled in New York State during the year 1967. He at no time during 1967 effected a change of domicile. Therefore, since petitioner was a domiciliary of New York State during said year and spent more than thirty days in New York State, he was subject to New York State personal income tax as a resident individual on all his income, including income earned outside the State during the year in issue, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

B. That the petition of Theodore Tully is denied and the Notice of Deficiency issued May 26, 1969, is sustained.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER