

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DUANE M. and PHYLLIS E. WEISE

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) ~~xxx~~ ~~xxxx~~ ~~xxxx~~  
1968, 1969 and 1970

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 19 77, she served the within Notice of Decision by (certified) mail upon Duane M. and Phyllis E. Weise ~~(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. Duane Weise  
586 May Jo Court  
Marietta, Georgia 30067 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)~~ ~~xxx~~ ~~xxx~~ 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  
24 day of August, 1977.

Marsina Donnini

Janet Buck

In the Matter of the Petition

of

DUANE M. and PHYLLIS E. WEISE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of **Personal Income**  
Taxes under Article ~~65~~ 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1968, 1969 and 1970

State of New York  
County of **Albany**

Marsina Donnini, 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 24 day of August, 19 77, she served the within Notice of Decision by (certified) mail upon John P. Kingsley, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: John P. Kingsley, Esq.  
c/o Harvey and Harvey, Esqs.  
29 Elk Street

Albany, New York 12207  
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

24 day of August, 1977

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

August 24, 1977

**Mr. & Mrs. Duane Weise**  
**586 May Jo Court**  
**Marietta, Georgia 30067**

**Dear Mr. & Mrs. Weise:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty**  
**Hearing Examiner**

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 :  
DUANE M. and PHYLLIS E. WEISE :  
for Redetermination of Deficiency or :  
for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Years 1968, 1969 and 1970. :  
:

DECISION

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Petitioner, Duane M. Weise, residing at 586 May Jo Court, Marietta, Georgia 30067, filed a petition and in behalf of his wife, address unknown, for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 01525).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, the State Campus, Building #9, Room 107, Albany, New York, on January 26, 1977 at 10:45 A.M. Petitioners appeared by John P. Kingsley, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Andrew Haber, Esq., of counsel).

ISSUE

Were petitioners both residents of New York State during the period January 1, 1968 to August 15, 1969 and did petitioner, Phyllis E. Weise, continue to be a New York resident from August 15, 1969 to June 15, 1970?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners were domiciliaries of New York State. On September 1, 1968 petitioner, Duane M. Weise, accepted a job offer and moved to Canada. His wife and children remained in their home in Schenectady, New York. Petitioner, Duane M. Weise, continued to contribute to the support of his family and occasionally visited them on weekends.

2. Petitioner, Duane M. Weise, took only personal belongings and moved into a furnished three room apartment in Canada. In August of 1969, he was fired from his job and he moved directly to Connecticut and leased a home there. At this time, he was involved in marital problems and his wife did not join him in Connecticut.

3. No satisfactory evidence was submitted to contravert the Income Tax Bureau's contention that petitioner, Phyllis E. Weise, continued to be a New York State resident until June 15, 1970.

4. That petitioner, Duane M. Weise, was domiciled in New York State during the period January 1, 1968 to August 15, 1969 and never changed domicile to Canada.

5. That since petitioner, Duane M. Weise, was a domiciliary of New York State and maintained a permanent place of abode in New York State and did not maintain a permanent place of abode outside of New York State during said period, he was, therefore, subject to personal income tax as a resident individual in accordance with the meaning and intent of section 605(a)(1) of the Tax Law during said period.

6. That petitioner, Phyllis E. Weise, was a resident of New York State for the period January 1, 1968 to June 15, 1970.

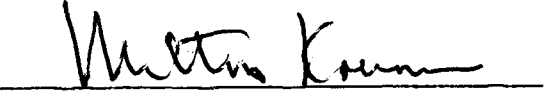
7. That the petition of Duane M. and Phyllis E. Weise is denied and the Notice of Deficiency in the amount of \$1,846.43 issued February 26, 1973 is sustained.

DATED: Albany, New York  
August 24, 1977

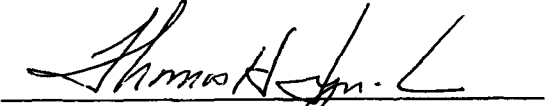
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER