

STATE OF NEW YORK,
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD C. COLTON and HOWELL L. COLTON

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) ~~xxxPeriod(s)~~
1968 and 1969

State of New York
County of Albany

John Huhn, 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 3rd day of May, 1978, she served the within
Notice of Decision by (certified) mail upon Richard C. Colton & Howell L.

Colton ~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Richard C. Colton & Howell L. Colton
801 Harbor Island
Clearwater Beach, Florida 33515

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~~ petitioner.

Sworn to before me this

3rd day of May, 1978.

[Signature]

John Huhn

STATE OF NEW YORK,
STATE TAX COMMISSION

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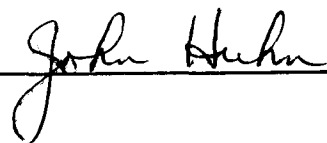
State of New York
County of Albany

John Huhn, 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 3rd day of May, 1978, she served the within Notice of Decision by (certified) mail upon Alan K. Greene (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alan K. Greene, c/o Price Waterhouse & Co., 60 Broad Street, New York, NY 10004 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
3rd day of May, 1978.







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

May 3, 1978

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

**Richard C. Colton and Howell L. Colton
801 Harbor Island
Clearwater Beach, Florida 33515**

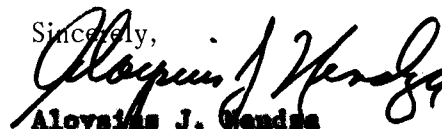
Gentlemen:

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,


**Aloysius J. Mendonza
Assistant Director**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD C. COLTON and HOWELL L. COLTON : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1968 and 1969. :

Petitioners, Richard C. Colton and Howell L. Colton, residing at 801 Harbor Island, Clearwater Beach, Florida 33515, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 00275).

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 September 14, 1976 at 1:15 P.M. Petitioners appeared by Alan K. Green, C.P.A., of Price Waterhouse & Co. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman, Esq., of counsel).

ISSUE

Whether petitioners Richard C. Colton and Howell L. Colton were resident individuals of New York State for the years 1968 and 1969.

FINDINGS OF FACT

1. On January 28, 1974, the Income Tax Bureau issued statements of audit changes against petitioners, Richard C. Colton and Howell L. Colton, imposing additional New York State personal income tax for the years 1968 and 1969 on the ground that the petitioners did not lose their status as New York residents, Accordingly, the Income Tax Bureau issued notices of deficiency in the amount of \$119,693.08 for 1968, and \$14,958.92 for 1969.

2. In the last quarter of 1967 petitioner, Richard C. Colton, who was a director and vice president of the Lykes Bros. Steamship Co., Inc. was required by them to work in New Orleans. He commenced work on January 2, 1968. His expertise was in the transportation field and he was sent there to develop a promotion program. The company paid for moving the petitioners' personal and household effects from New York. The records of a New Orleans realtor, Ernest A. Carrere's Sons indicated that the petitioners leased and resided at the Carol Apartment, Apt. 12H, 2100 St. Charles Avenue, New Orleans, Louisiana 70140, from January 1, 1968 to July 1, 1969, and that they attempted to purchase a home there.

3. On December 26, 1967, petitioners, Richard C. Colton and Howell L. Colton advised the U.S. Treasury Department of their transfer to the New Orleans jurisdiction and cited their new address effective January 1, 1968 as being in New Orleans, Louisiana. Richard C. Colton then resigned as mayor of Pelham, New York.

Because of the poor economic climate for the sale of their residence, the petitioners boarded up the home which they owned at 251 Loring Avenue, Pelham, New York and put it under police security. They moved their furniture and personal effects to their new residence in Louisiana. Richard C. Colton obtained a Louisiana driver's license and car registration. He also registered to vote and then did so in Louisiana. The petitioners joined the Cactus Club, an expensive club associated with the Mardi Gras in New Orleans.

4. Petitioner, Howell L. Colton, became ill soon after her husband's transfer to New Orleans and came under the care of a physician there from March 7, 1968 to May 21, 1969. She received treatment twice weekly. Her illness forced the petitioners to remove themselves from Louisiana and return to New York. On July 1, 1969 Richard C. Colton resigned his position with Lykes Bros. Steamship Co., Inc. and took a new job with another firm in New York. The petitioners moved back to their New York residence. Howell L. Colton, continued to have treatment at the Institute of the Living in Hartford, Connecticut and eventually recovered. They sold their original New York home in October 1969 and bought a smaller one.

5. Petitioners, Richard C. Colton and Howell L. Colton filed State of Louisiana personal income tax returns for all of 1968 and for the period January 1, 1969 to June 30, 1969. They filed New York State personal income tax returns for the period July 1, 1969 to December 31, 1969.

6. Petitioners, Richard C. Colton and Howell L. Colton, relied on the advice of their accountants and cooperated with the Income Tax Bureau.

CONCLUSIONS OF LAW

A. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during the entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State. (20 NYCRR 102.2(b))

B. That domicile, in general, is defined as the place an individual intends to be his permanent home, as well as the place to which he intends to return whenever he may be absent. (20 NYCRR 102.2(d))

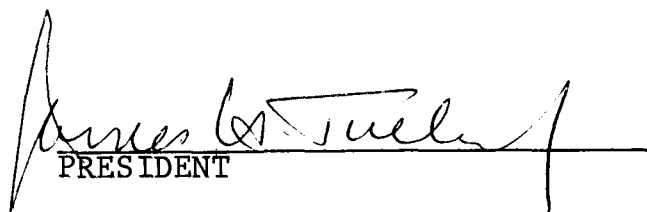
C. That petitioners, Richard C. Colton and Howell L. Colton, were domiciliaries of New York State for the years 1968 and 1969.

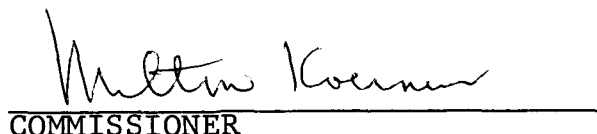
D. That since petitioners, Richard C. Colton and Howell L. Colton, were domiciliaries of New York during 1968 and 1969 and maintained a permanent abode in the State, they were, therefore, resident individuals in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

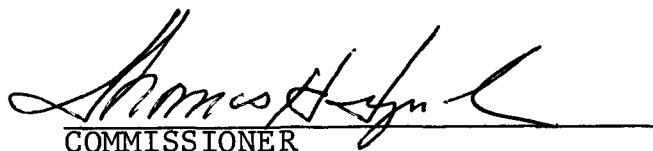
E. That the petition of Richard C. Colton and Howell L. Colton is granted to the extent that the penalties imposed pursuant to section 685(a) of the Tax Law are cancelled; that the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued January 28, 1974, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 3, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER