

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Melvin & Blossom Cook :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1971. :

State of New York
County of Albany

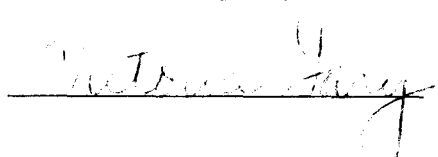
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon Melvin & Blossom Cook, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

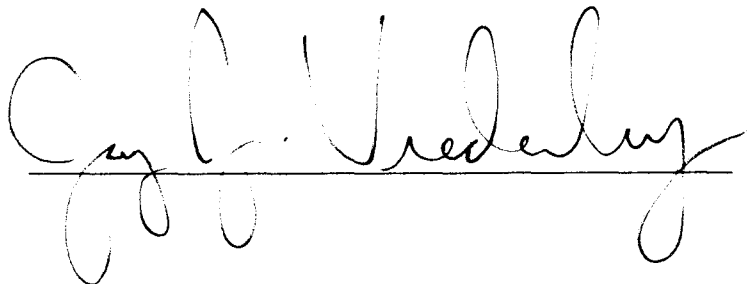
Melvin & Blossom Cook
17 Scenic Dr.
Suffern, NY 10901

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
8th day of August, 1979.


Notary Public


Jay Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 8, 1979

Melvin & Blossom Cook
17 Scenic Dr.
Suffern, NY 10901

Dear Mr. & Mrs. Cook:

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,

A handwritten signature in dark ink, appearing to read "Joseph Chynoweth", with a stylized, flowing script.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MELVIN COOK and BLOSSOM COOK : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :
:

Petitioners, Melvin Cook and Blossom Cook, 17 Scenic Drive, Suffern, New York 10901, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 15782).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1978 at 1:15 P.M. Petitioner Melvin Cook appeared pro se and for his wife, petitioner Blossom Cook. The Income Tax Bureau appeared by Peter Crotty, Esq. (Robert N. Felix, Esq., of counsel).

ISSUE

Whether petitioner Melvin Cook was a resident and domiciliary of New York State for all of 1971.

FINDINGS OF FACT

1. A timely New York State Income Tax Resident Return (Form IT-201) was filed for 1971 by petitioners, Melvin Cook and Blossom Cook. On this return, petitioners reported total income of \$16,141.00.

2. On February 24, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners, imposing additional personal income tax of \$1,708.70, plus interest. The Notice was issued on the grounds that petitioners' total income of \$31,937.00 reported on their Federal return must also be reported on their New York State return. The Income Tax Bureau allowed a standard deduction of \$1,500.00 and exemptions of \$4,550.00, to arrive at corrected New York taxable income of \$25,887.00.

3. Petitioner Melvin Cook moved from his home in Suffern, New York, to Clifton, New Jersey, on or about May 1, 1971 because of a change of employer. The petitioner removed all of his personal belongings from his New York home and boarded with a friend in New Jersey. He then returned to his home in New York State late in December of 1971. Said petitioner continued to work for his New Jersey employer.

4. Petitioner Melvin Cook contended that while he was employed in New Jersey and while he maintained a permanent domicile in said state, no New Jersey emergency transportation tax was withheld from his salary.

5. During the time he was living in New Jersey, petitioner's wife and children lived in the New York home.

6. Petitioners' Federal return for 1971 shows itemized deductions of \$7,283.00, of which \$1,500.00 were state and local taxes.

CONCLUSIONS OF LAW

A. That petitioner Melvin Cook was domiciled in New York State during 1971. While he may have intended to abandon his New York domicile in May of 1971, he did not acquire a new domicile by the acts of taking employment and boarding with a friend in New Jersey. Petitioners also did not sustain the burden of proof necessary to show that Mr. Cook intended to change his domicile from New York to New Jersey.

B. That although petitioner Melvin Cook did not maintain a permanent place of abode in New York State during the latter part of 1971, he is still considered a resident individual of New York State during said year, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2. This was so because he was a) domiciled in New York State, b) spent more than 30 days in New York State, and c) did not maintain a permanent place of abode outside of New York State during the entire year.

C. That the Income Tax Bureau computation for personal income tax for 1971 should be modified to allow New York itemized deductions, as set forth in Finding of Fact "6".

D. That the petition of Melvin Cook and Blossom Cook is granted to the extent indicated in Conclusion of Law "C", supra, and the Notice of Deficiency issued on February 25, 1975

should be so modified. Except as so granted, however, the petition is in all other respects denied.

DATED: Albany, New York
August 8, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER