

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard A. & Doris S. Roberts :
: **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 Years 1965 & 1966. :

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Bernard A. & Doris S. Roberts, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard A. & Doris S. Roberts
8 Clinton Pl.
Maplewood, NJ 07040

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard A. & Doris S. Roberts :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1965 & 1966. :

AFFIDAVIT OF MAILING

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Allan Sedler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

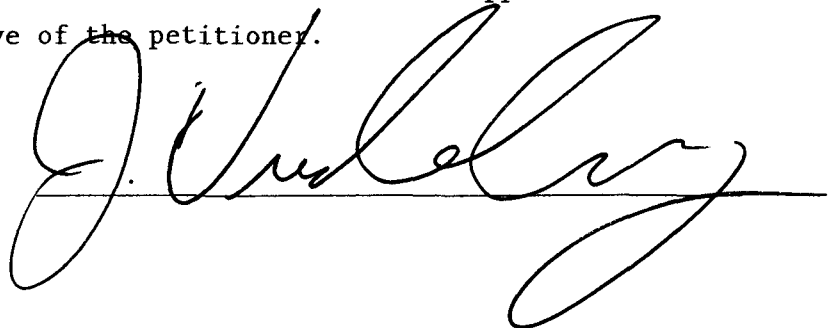
Mr. Allan Sedler
Margolin and Sedler, Accountants & Auditors
1111 Clifton Ave.
Clifton, NJ 07013

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
16th day of November, 1979.

Joanne Knapp



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

November 16, 1979

Bernard A. & Doris S. Roberts
8 Clinton Pl.
Maplewood, NJ 07040

Dear Mr. & Mrs. Roberts:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Allan Sedler
Margolin and Sedler, Accountants & Auditors
1111 Clifton Ave.
Clifton, NJ 07013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

DR. BERNARD A. ROBERTS and DORIS S. ROBERTS : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1965 and 1966. :

Petitioners, Dr. Bernard A. Roberts and Doris S. Roberts, 8 Clinton Place, Maplewood, New Jersey 07040, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 and 1966 (File No. 13883).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1977 at 1:15 P.M. Petitioners appeared by Allan Sedler, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioners were resident individuals of New York State for personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Dr. Bernard A. Roberts and Doris S. Roberts, did not file New York State income tax returns for 1965 and 1966. Petitioners filed joint Federal income tax returns for those years, giving as their address 880 Fifth Avenue, New York, New York. The Form 1040 was prepared by petitioners' certified public accountant, since deceased.

2. In March 1970, the Income Tax Bureau received a report from the United States Internal Revenue Service that audit changes had been made in petitioners' income for 1965. On September 25, 1972, the Income Tax Bureau issued a Notice of Deficiency to petitioners asserting income taxes as follows:

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1965	\$ 5,043.44	\$1,513.03	\$1,950.00	\$ 8,506.47
1966	<u>5,448.48</u>	<u>1,634.57</u>	<u>1,779.69</u>	<u>8,862.74</u>
TOTAL	\$ 10,491.92	\$3,147.60	\$3,729.69	\$17,369.21

3. The tax deficiency was computed on the grounds that petitioners were resident individuals of New York, under Section 605 of the Tax Law during 1965 and 1966.

4. On December 26, 1972, petitioners filed a petition for redetermination of the tax deficiency.

5. Petitioners were registered voters from 8 Clinton Place, Maplewood, New Jersey, from September 14, 1951 through September 1977. They owned the premises and resided there in 1965 and 1966.

6. Petitioner Dr. Bernard A. Roberts was a full-time practicing ophthalmologist with offices at 369 West Blackwell Street, Dover, New Jersey. In the tax years 1965 and 1966 and since, Dr. Roberts was Chief of Ophthalmology at Dover General Hospital, Dover, New Jersey, and also at St. Clare's Hospital, Denville, New Jersey. Daily diaries of the work performed in his office and at the two New Jersey hospitals gave details of Dr. Robert's procedures during all of 1965 and 1966. He had less than ten entries showing work in New York in 1965 and 1966.

7. Petitioner Dr. Bernard A. Roberts, owned a co-operative professional apartment at 880 Fifth Avenue, New York, New York, where he at one time had his medical practice. That office was rented during 1965 and 1966 to another physician who also reimbursed Dr. Roberts for the wages of the nurse in attendance there. Dr. Roberts did see an occasional old patient at the aforementioned professional apartment during 1965 and 1966. He submitted a sworn statement that he had never resided at the Fifth Avenue address.

CONCLUSIONS OF LAW

A. That petitioners, Dr. Bernard A. Roberts and Doris S. Roberts were not domiciled in New York State and since they did not maintain a permanent place of abode in New York, they were nonresident individuals of New York State within the meaning of Section 605 of the Tax Law during 1965 and 1966. As such, petitioners would be required to file New York State nonresident personal income tax returns under Section 651(a) (3) of the Tax Law, reporting only such income as would be required under Section 632 of said chapter; i.e., income from New York sources.

B. That the petition of Dr. Bernard A. Roberts and Doris S. Roberts is granted to the extent determined in Conclusion of Law "A". The Income Tax Bureau is hereby directed to determine petitioners' New York source income (rental income, professional fees, etc.) and to modify the Notice of Deficiency issued September 25, 1972. Except as so granted the petition is in all other respects denied.

DATED: Albany, New York

NOV 16 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER