

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Arthur B. Churchill :
Ruth P. Churchill, Executrix : 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 1964 & 1965. :

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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon Estate of Arthur B. Churchill, Ruth P. Churchill, Executrix, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Arthur B. Churchill
Ruth P. Churchill, Executrix
Village Rd.
Green Village, NJ 07935

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
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Arthur B. Churchill :
Ruth P. Churchill, Executrix : 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 1964 & 1965. :

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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon John L. Cady 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. John L. Cady
1221 Ave. of the Americas
New York, NY 10020

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
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 2, 1980

Estate of Arthur B. Churchill
Ruth P. Churchill, Executrix
Village Rd.
Green Village, NJ 07935

Dear Mrs. Churchill:

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
John L. Cady
1221 Ave. of the Americas
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF ARTHUR B. CHURCHILL	:	DECISION
and	:	
RUTH P. CHURCHILL	:	
(Individually and as Executrix)	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1964 and	:	
1965.	:	

Ruth P. Churchill, individually and as Executrix of the Estate of Arthur B. Churchill, Village Road, Green Village, New Jersey 07935, 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 1964 and 1965 (File No. 10591).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 16, 1978 at 1:15 P.M. Petitioner appeared by John L. Cady, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency issued against Ruth P. Churchill for 1964 was barred by the statute of limitations.

II. Whether the Notice of Deficiency issued against the Estate of Arthur B. Churchill for 1965 was barred by the statute of limitations.

III. Whether decedent, Arthur B. Churchill, was entitled to an allocation of earnings to sources outside New York State, for rendering services performed at home as an employee during 1964.

IV. Whether decedent, Arthur B. Churchill, is entitled to an allocation of earnings outside the State in the absence of proof that he did, in fact, perform such services other than those performed at home.

FINDINGS OF FACT

1. Arthur B. and Ruth P. Churchill were nonresidents residing in Green Village, New Jersey, prior to and during 1964 and 1965. They filed New York State income tax nonresident returns for 1964 and 1965.

2. Arthur B. Churchill died on May 4, 1966. Thereafter, Ruth P. Churchill was appointed Executrix of the Estate of Arthur B. Churchill.

3. On October 28, 1966, Ruth P. Churchill, as Executrix of the Estate of Arthur B. Churchill, signed a consent extending the period within which to issue an assessment to "one year following the close of proceedings now pending for tax year 1962," with respect to the income tax return of Arthur B. Churchill and Ruth P. Churchill for 1964, validated June 16, 1967. No consent extending the statute of limitations for 1964 was signed by Ruth P. Churchill, individually.

4. On June 6, 1967, Ruth P. Churchill and John Churchill (son of Arthur B. and Ruth P. Churchill) signed a consent extending the period within which to issue an assessment to "one year following close of proceedings now pending for the tax year 1962," with respect to the income tax return of Arthur B. and Ruth P. Churchill for 1965, validated June 16, 1967. No consent extending the statute of limitations for 1965 was signed by Ruth P. Churchill, as Executrix of the Estate of Arthur B. Churchill.

5. The proceedings of Ruth P. Churchill (individually and as Executrix of the Estate of Arthur B. Churchill) for 1962 were terminated by a decision of the Appellate Division of the Supreme Court, Third Judicial Department, on December 15, 1971.

6. On November 27, 1972, the Income Tax Bureau issued a Statement of Audit Changes against Ruth P. Churchill, individually and as Executrix of the Estate of Arthur B. Churchill, imposing additional income tax for 1964 and 1965 of \$9,411.74, plus interest of \$4,020.81, for a total of \$13,432.55. This was done on the ground that Mr. Churchill was not entitled to an allocation for days worked at home. Accordingly, a Notice of Deficiency was issued therefor. A petition was timely filed for redetermination of said deficiency.

7. On his New York nonresident income tax return for 1964, decedent, Arthur B. Churchill, reported total wages received from West, Weir & Bartel, Inc., 1721 Avenue of the Americas, New York, New York, of \$71,288.18 as reported for Federal tax purposes, but he only attributed \$15,597.15 thereof to New York. On his New York nonresident return for 1965, Mr. Churchill reported wages as indicated on his Federal return of \$65,203.80, but he only attributed \$5,226.18 thereof to New York.

8. During 1964 and 1965, Mr. Churchill was suffering from emphysema. At the direction of his physician, he spent about 49 days in Florida during each year at issue. It is conceded that Mr. Churchill spent at least 25 days in the State of New York in 1964, performing services on behalf of his employer at his home in New Jersey. The decedent did not maintain a record of such days or dates.

9. Although it is contended that decedent, Arthur B. Churchill, spent time outside New York State performing services on behalf of his employer (in addition to the time spent at home), no evidence was presented to indicate the number of such days or the dates thereof. Mr. Churchill did not maintain a diary to indicate the days spent both within and without the State of New York.

10. Although it is contended that Mr. Churchill was directed by his employer to refrain from working in New York City, it was primarily because of his health.

11. The petition sets forth as an affirmative defense the statute of limitations with respect to the Notice of Deficiency for 1964 and 1965.

CONCLUSIONS OF LAW

A. That since petitioner Ruth P. Churchill, individually, did not sign any waiver extending the period within which to issue an assessment for 1964, the Notice of Deficiency issued against her, individually, on November 27, 1972 was not timely issued within 3 years from the date of the filing of the return for 1964, i.e., June 9, 1965.

B. That the Notice of Deficiency issued against Ruth P. Churchill for 1964 was barred by the statute of limitations and that said Notice of Deficiency, with respect to Ruth P. Churchill, is, therefore, cancelled.

C. That since no waiver extending the period within which to issue an assessment was signed by a representative of the Estate of Arthur B. Churchill (with respect to the return filed by Arthur B. Churchill for 1965), the Notice of Deficiency issued against the Estate of Arthur B. Churchill on November 27, 1972 for 1965 was not timely issued within three years from the date of the filing of the return, i.e., April 21, 1965.

D. That the Notice of Deficiency issued against the Estate of Arthur B. Churchill for 1965 is barred by the statute of limitations and that said Notice of Deficiency, with respect to the Estate of Arthur B. Churchill, is hereby cancelled.

E. That any allowance claimed for days worked outside the State must be based on the performance of services which of necessity (as distinguished from convenience) obligate an employee to out-of-state duties in the service of his employer. (20 NYCRR section 131.16)

F. That the services performed by decedent, Arthur B. Churchill, at his home in New Jersey and Florida in 1964, because of his illness, were performed for his convenience; therefore, the days worked at home are attributable to New York sources. (Morehouse v. Murphy, 10 AD2d 764; app. dsmd., 8 NY2d 932; Burke v. Bragalini, 10 AD 654; Burke v. Murphy, 33 AD2d 581; Speno v. Gallman, 35 NY2d 256; Churchill v. Gallman, 38 AD2d 631; Page v. State Tax Commission, 46 AD2d 341.

G. That petitioner has failed to prove that decedent, Arthur B. Churchill, was entitled to an allocation of days worked outside the State during 1964, within the intent and meaning of section 632 of the Tax Law and the Income Tax Regulations (20 NYCRR section 131.16).

H. That the petition of the Estate of Arthur B. Churchill and Ruth P. Churchill (Individually and as Executrix) is granted to the extent indicated in Conclusions of Law "B" and "D", but that is in all other respects denied.

DATED: Albany, New York

MAY 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER