

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Edward H. Covington :  
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 1972. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Edward H. Covington, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward H. Covington  
411 Hillcrest Dr.  
High Point, NC 27260

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  
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Edward H. Covington  
411 Hillcrest Dr.  
High Point, NC 27260

Dear Mr. Covington:

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  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
EDWARD H. COVINGTON : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1972. :

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Petitioner, Edward H. Covington, 411 Hillcrest Drive, High Point, North Carolina 27260, 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 1972 (File No. 16511).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York 12227, on September 14, 1978 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

#### ISSUE

Whether petitioner was a New York State resident for income tax purposes for 1972.

#### FINDINGS OF FACT

1. On April 2, 1973, petitioner, Edward H. Covington and his wife Katherine T. Covington, filed a New York State Income Tax Resident Return for 1972. On December 19, 1975, they filed an amended New York State Combined Income Tax Return for 1972, for nonresident married persons filing a joint Federal return who elect to file separate New York State returns. Petitioner sought a refund of \$3,664.00. His wife sought a refund of \$63.00.

2. On January 13, 1976, petitioner's representative signed a consent fixing the period of limitation upon assessment for 1972 to April 15, 1977.

On August 30, 1976, the Audit Division issued a Statement of Audit Changes against Edward H. Covington for 1972 which stated the following:

there was no provision in the New York Personal Income Tax Law to allow exclusion by a resident of a nonresident trust accumulation distribution. As resident of New York you must report all items of income regardless of where earned. The accumulation distribution although earned by the trust in years prior to your becoming residents of New York is not an accruable item since you did not have constructive or actual receipt of funds prior to the 1972 distribution date.

On August 30, 1976, the Audit Division issued a Notice of Deficiency to petitioner for \$1,364.44, plus interest of \$345.41, for a total of \$1,709.85.

3. In early 1970, petitioner was graduated from the University of North Carolina at Chapel Hill, North Carolina and was employed by Harriss & Covington Hosiery Mills, Inc. ("Harriss"), a family owned hosiery manufacturer in High Point, North Carolina in which he is a major shareholder. After a short period of time, petitioner sought additional background and education regarding the corporation's marketing and sales functions. This could best be obtained by a period of apprenticeship for petitioner with the corporation's independent New York sales agent, J. P. Manning, Inc. ("Manning"). The period would be of unspecified duration and he would resume his North Carolina employment on the conclusion of the period. Accordingly, petitioner moved to New York and began employment in mid-1971.

4. It was decided that the agent would employ petitioner while he was in New York and discussions took place between him and officials of Manning. Discussions also took place with an independent insurance agent on whether petitioner would participate in various fringe benefits of the company due to the unspecified duration of the employment. It was decided that he would participate in the profit-sharing plan due to the requirements of the plan,

even though it would provide him with no benefits. He would also participate in the life insurance program since he would be able to continue the insurance in force at his option on his departure.

While no contributions were made on his behalf, petitioner's rights under the Harriss profit-sharing plan continued during his leave of absence.

5. While in New York, Edward H. Covington rented an apartment in Manhattan rather than purchasing a suburban home as he would have done had he intended to remain in New York permanently. While in New York, he continued to receive business mail at his North Carolina address and continued to attend the monthly meetings of a North Carolina military reserve unit, rather than transferring to a New York unit. He kept his North Carolina church affiliation active and continued to make annual pledges to that church, rather than joining a New York church. He retained possession of various North Carolina property; specifically, these were North Carolina real estate and hunting dogs.

6. During 1972, petitioner purchased a part interest in a condominium located in the North Carolina mountains. During January of 1972, he executed a will at Wachovia Bank and Trust Company in High Point, North Carolina, maintained North Carolina registration for his automobile and maintained a North Carolina driver's license. He also maintained an account with a North Carolina office of a stock brokerage firm, and did not join a New York club as was the custom with his contemporaries residing in New York. He left various household articles in storage in North Carolina.

In November of 1973, it was felt that petitioner had received sufficient exposure to the business and he moved back to North Carolina, carrying out the original intentions of employee and employer. Then petitioner immediately returned to the employ of Harriss in High Point.

7. Petitioner worked full time for Manning in New York City from November

1971 until November 1973. He lived at 11 East 75th Street and then 316 East 83rd Street, New York, New York.

8. Petitioner claimed that his New York State income tax returns were inadvertently prepared on the basis of his being a resident of the State. During 1972, petitioner received an accumulation distribution of certain trust income earned during 1967, 1970 and 1971. This amount was reported on the Federal return as required; however, since the income in those prior years was North Carolina income earned by a North Carolina trust, and since Mr. Covington believed that he was not a resident of New York State during those years, he thought that the income should not be taxed by New York State. Accordingly, the income was not reported in the taxpayer's 1972 New York State income tax return.

#### CONCLUSIONS OF LAW

A. That petitioner, Edward H. Covington, was a domiciliary of North Carolina during the years at issue.

B. That section 605(b) of the Tax Law defines a nonresident individual as an individual who is not a resident.

C. That section 605(a)(2) of the Tax Law defines a resident individual as an individual "who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state...."

D. That a permanent place of abode means a dwelling place permanently maintained by the petitioner, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. Also a place of abode, whether in this state or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2(e)).

E. That petitioner, Edward H. Covington, maintained a permanent place of abode in New York State, since his stay in New York State was for an unspecified duration; that he spent more than one hundred eighty-three days in New York State during 1972; therefore, he was a resident individual of New York for 1972.

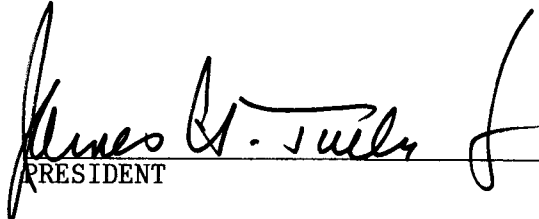
F. That pursuant to section 612(a) of the Tax Law, the adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year with certain modifications. Therefore, the accumulation distribution is subject to New York personal income tax.

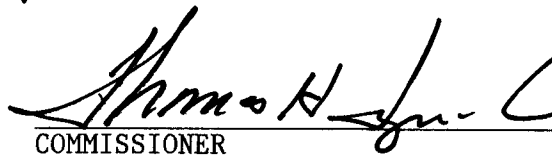
G. That the petition of Edward H. Covington is denied and the Notice of Deficiency issued on August 30, 1976 is sustained.

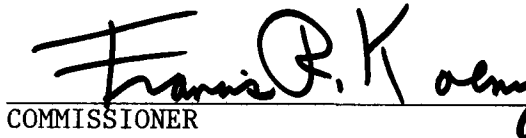
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER