

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Eugene P. Shevlin :

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 1974. :

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 Eugene P. Shevlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

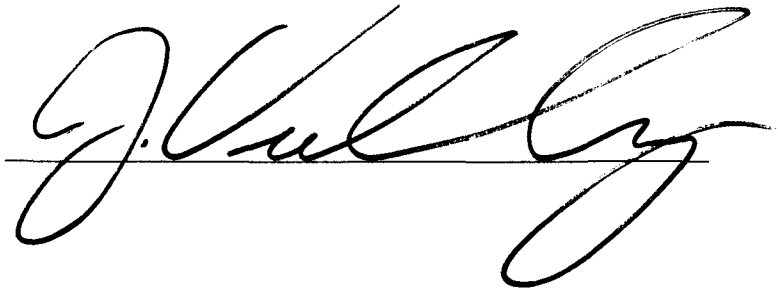
Eugene P. Shevlin  
c/o M. Kovner  
New York, NY 10021

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



STATE OF NEW YORK  
STATE TAX COMMISSION

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of

Eugene P. Shevlin

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
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for the Year 1974. :

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 Milton Kovner 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. Milton Kovner  
51 E. 67th St.  
New York, NY 10021

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  
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Eugene P. Shevlin  
c/o M. Kovner  
51 E. 67th St.  
New York, NY 10021

Dear Mr. Shevlin:

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  
Milton Kovner  
51 E. 67th St.  
New York, NY 10021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EUGENE P. SHEVLIN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioner, Eugene P. Shevlin, c/o Milton Kovner, CPA, 51 East 67th Street, New York, New York 10021, 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 1974 (File No. 15474).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1979 at 9:15 A.M. Petitioner appeared by Milton Kovner, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was domiciled in and a resident of New York State during 1974.

FINDINGS OF FACT

1. Petitioner, Eugene P. Shevlin, timely filed a New York State Income Tax Nonresident Return for the year 1974 on which he indicated that he "lived and worked outside USA for the entire year". He requested a refund for all New York State personal income taxes withheld of \$5,333.00.

2. On October 10, 1975, the Income Tax Bureau issued a Statement of Refund Adjustment on which the refund request of \$5,333.00 was reduced to \$3,504.58 based on the determination that:

- a. Petitioner was a New York State resident for 1974, and accordingly, "all income is taxable to New York".
- b. "An error was made in computing the additional income tax due on Form 115, on which you reported the Federal adjustments for the year 1972." This determination was not challenged by petitioner.

On December 9, 1974, the Income Tax Bureau issued a refund for \$3,504.58, plus interest.

3. On May 24, 1976, the Audit Division issued a Notice of Deficiency along with an explanatory Statement of Audit Changes for additional tax due of \$198.59, plus interest of \$18.68. The deficiency was based on adjustments pursuant to a Federal audit report dated November 14, 1975. Petitioner disagrees with the Statement of Refund Adjustment issued October 10, 1975, and the Notice of Deficiency issued May 24, 1976 to the extent applicable to 1974. He disagrees on the grounds that he was a nonresident of New York State during 1974 and owes no taxes for that year. Accordingly, he petitioned for the balance of his refund of \$1,733.59.

4. Petitioner, Eugene P. Shevlin, was an airline pilot for Pan American World Airways, Inc. (Pan Am). In this capacity, he frequently flew between Portugal and New York.

5. Petitioner, a resident of New York State, contended that on October 1, 1972 he obtained an apartment in Portugal and that during 1973, he decided to become a permanent resident of Portugal.

6. Petitioner obtained a Portuguese Resident Card and registered with the United States Embassy November 7, 1973.

7. Petitioner, during 1974, continued to maintain his home in New York State with various pieces of furniture and a telephone with an answering system. Petitioner also maintained bank accounts and a post office box in New York State.

8. Petitioner maintained an apartment and bank accounts in Portugal during 1974.

9. Petitioner contended that he maintained a mailing address and a telephone in New York State as a convenience to his friends, relatives and employer in the event they wanted to contact him. He further contended that he maintained a home in New York State solely for investment purposes.

10. On October 31, 1975, petitioner began receiving a disability retirement benefit from Pan Am. All disability payments were sent to petitioner's New York bank.

11. Petitioner contended that he spent 81 days in New York State during 1974, of which 30 days were for vacation, and 51 days were at Kennedy Airport, between flights.

12. Subsequent to his retirement in 1975, petitioner continued to maintain an apartment in Portugal. He also maintained a post office box, a telephone, bank accounts and a home in New York State. He continued to frequently visit the United States but could not recall the average number of days spent in New York State during any given period.

#### CONCLUSIONS OF LAW

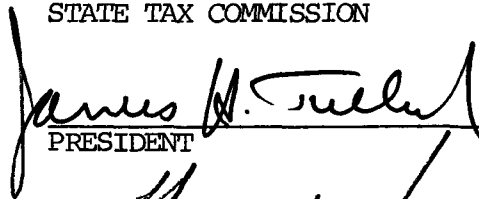
A. That petitioner, Eugene P. Shevlin, was domiciled in and a resident of New York State during 1974 in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

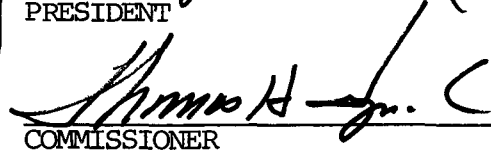
B. That the petition of Eugene P. Shevlin is in all respects denied and the Notice of Deficiency issued May 24, 1976 is sustained, along with such additional interest as may be lawfully owing.

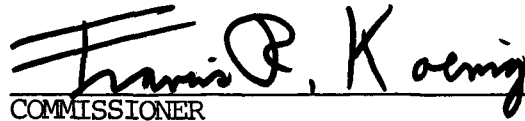
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER