

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bertram S. & Julia T. Silver :

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 1971 & 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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Bertram S. & Julia T. Silver, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bertram S. & Julia T. Silver
RR #2 Box 177
Newton, CT 06470

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
3rd day of October, 1980.

Robert Bank

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bertram S. & Julia T. Silver :

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 1971 & 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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Arthur Spiro and Asher Yablon 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. Arthur Spiro and Asher Yablon
Brout & Company
380 Madison Ave.
New York, NY 10017

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
3rd day of October, 1980.

Rebecca Bank

J. Vredenburg

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

October 3, 1980

Bertram S. & Julia T. Silver
RR #2 Box 177
Newton, CT 06470

Dear Mr. & Mrs. Silver:

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
Arthur Spiro and Asher Yablon
Brout & Company
380 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :

of :

BERTRAM S. SILVER and JULIA T. SILVER :

DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article
22 of the Tax Law for the Years 1971 and 1972.:

Petitioners, Bertram S. Silver and Julia T. Silver, R.R. No. 2, Box 177, Newton, Connecticut 06470, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 13773).

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 April 28, 1977 at 9:50 A.M. and on September 27, 1977 at 1:15 P.M. Petitioners appeared by Brout & Company (Asher Yablon, CPA and Arthur Spiro, CPA). The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly considered petitioners to be residents of New York State for the tax years 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, Bertram S. Silver and Julia T. Silver, timely filed New York State Resident Income Tax Return for 1971 and New York State Nonresident Income Tax Return for 1972.

2. On November 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes to petitioner Julia T. Silver, advising her that both she and her husband were being considered New York State residents and that all their income was taxable to New York. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency asserting additional income taxes for 1971 and 1972 against petitioner Julia T. Silver as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1971	\$ 305.20	\$ 67.49	\$ 372.69
1972	<u>5,634.33</u>	<u>1,135.71</u>	<u>6,770.04</u>
TOTAL	\$5,939.53	\$1,203.20	\$ 7,142.73

3. On December 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency, asserting additional income tax for 1971 and 1972 against petitioner Bertram S. Silver as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1971	\$ 799.11	\$ 176.72	\$ 975.83
1972	<u>6,900.01</u>	<u>1,390.84</u>	<u>8,290.85</u>
TOTAL	\$7,699.12	\$1,567.56	\$ 9,266.68

4. On March 20, 1976, each of the petitioners filed a petition for redetermination of the income tax asserted against them.

5. Bertram S. Silver was the chief operating officer of the Lehigh Furniture Company division of Litton Business Systems, Inc. ("Litton"), with the main office and plant in Burlington, Iowa. Petitioner Bertram S. Silver had sold Lehigh Furniture Company to Litton in 1965 or 1966 and had then become associated with Litton. Half of petitioner Bertram S. Silver's time was spent at Burlington, Iowa (where he lived in a hotel), and the balance between an apartment in New York and his farm in Connecticut.

6. Petitioner Bertram S. Silver kept diaries of his days spent within and without New York in 1971 and 1972. He allegedly spent in excess of thirty days and less than 183 days in each year in New York State.

7. In July of 1972, petitioner Bertram S. Silver retired from Litton. According to his sworn petition for redetermination of the income tax deficiency, on July 27, 1972, petitioner Bertram S. Silver decided to abandon New York and transfer all of his activities to the farm in Connecticut where he and his wife, Julia T. Silvers, had maintained a home and farm since 1954. Petitioner Bertram S. Silver notified his bank of a change of address to Connecticut; advised his brokers of the same change; allowed his New York driver's license to expire; registered his automobile in Connecticut and had his business cards as a consultant printed with the Connecticut address. Later in 1972, petitioner Bertram S. Silver registered to vote in Connecticut.

8. Petitioner Julia T. Silver was the manager of two high-style floors of Bergdorf Goodman in New York. She owned a house in Connecticut when she married petitioner Bertram S. Silver in 1954. She sold that house and that same year, the couple purchased a farm in Connecticut with several houses on it, where they set up a residence. Petitioner Julia T. Silver owned two co-operative apartments at the Hampshire House in New York, which were kept as investments. They were rented on a per diem basis and were available for her use when desired. Petitioners, Bertram S. Silver and Julia T. Silver, purchased a four bedroom co-operative apartment at 565 Park Avenue, New York, New York, in 1964. They kept a housekeeper in residence and stayed there occasionally when in New York. Julia T. Silver used the apartment to entertain out-of-town guests, particularly important clients of her employer, Bergdorf Goodman.

9. Petitioner Julia T. Silver spent much of her time travelling to places throughout the world on store business. A reconstructed diary of her days in New York and outside the State indicates less than 183 days and more than thirty days spent in New York in each of the years 1971 and 1972.

10. In her sworn petition dated March 20, 1976 for redetermination of the income tax deficiency asserted against her, petitioner Julia T. Silver stated that late in July of 1972, she decided to abandon New York and center her life in Connecticut, where she had long had a residence. She notified her broker, her bank, and others that she was changing her address from New York to Connecticut. She allegedly registered and voted in that state in 1972. She made a will stating Connecticut to be her home address.

CONCLUSIONS OF LAW

A. That petitioner Bertram S. Silver was domiciled in New York in 1971 and 1972 until he (by his overt demonstration of the intent to do so) abandoned that domicile and acquired a new one in Connecticut near the end of July, 1972. Petitioner Julia T. Silver, his wife with whom he was living, had the same domicile.

B. That Bertram S. Silver and Julia T. Silver were residents of New York State for income tax purposes for all of 1971 and for the first seven months of 1972, within the meaning and intent of section 605(a)(1) of the Tax Law, since they maintained a permanent place of abode in this State and spent more than thirty days here.

C. That Bertram S. Silver and Julia T. Silver were non-resident taxpayers for the last five months of 1972. The Audit Division is directed to recompute the income tax deficiency for 1972 on the basis of information available.

D. That the petitions of Bertram S. Silver and Julia T. Silver are granted to the extent indicated in Conclusion of Law "C", and that except as so granted, the petitions are otherwise denied and the notices of deficiency dated December 22, 1975 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1980

PRESIDENT

COMMISSIONER

COMMISSIONER

I DISSENT

James B. Sullivan