

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph A. & Elizabeth M. Phillips :
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 1973. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Joseph A. & Elizabeth M. Phillips, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph A. & Elizabeth M. Phillips
7 Peter Cooper Rd.
New York, NY

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
20th day of February, 1981.

Connie P. Hagelund

J. Vredenburg

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

February 20, 1981

Joseph A. & Elizabeth M. Phillips
7 Peter Cooper Rd.
New York, NY

Dear Mr. & Mrs. Phillips:

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

In the Matter of the Petition	:	
of	:	
JOSEPH A. PHILLIPS	:	
and	:	DECISION
ELIZABETH M. PHILLIPS	:	
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax Law	:	
for the Year 1973.	:	

Petitioners, Joseph A. Phillips and Elizabeth M. Phillips, 7 Peter Cooper Road, New York, New York, 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 1973 (File No. 17617).

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 May 16, 1980 at 1:15 P.M. Petitioner Joseph A. Phillips appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State during the entire year 1973.

FINDINGS OF FACT

1. Petitioners, Joseph A. Phillips and Elizabeth M. Phillips, timely filed a joint New York State Income Tax Resident Return for the year 1973, on which they reported total New York income in the sum of \$39,724.00.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency against the petitioners for the year 1973 imposing tax due of \$449.98, plus interest of \$93.75, along with an explanatory Statement of Audit Changes, on which taxable income was increased by \$3,000.00.

3. Petitioners, Joseph A. Phillips and Elizabeth M. Phillips, were residents of the State of New York, when in the summer or fall of 1971, petitioner Joseph A. Phillips moved to Washington, D.C. Petitioner Joseph A. Phillips accepted a position as Chief Counsel to the United States Congressional Crime Committee.

4. Petitioner Joseph A. Phillips left his wife (petitioner Elizabeth M. Phillips) in New York and rented a furnished apartment on a month-to-month basis until such time he located more permanent quarters. Sometime in late 1971 or early 1972, petitioners, Joseph A. Phillips and Elizabeth M. Phillips, located an unfurnished apartment and moved their furnishings and personal belongings to Washington, D.C. Petitioner Joseph A. Phillips could not recall the exact date they moved to Washington, D.C. or whether they signed a lease for the unfurnished apartment.

5. Petitioner Joseph A. Phillips could not recall whether he obtained a new drivers license in Washington, D.C. Petitioner's testimony regarding other indicias of intent was vague, generalized and unspecific.

6. Sometime in late 1972, petitioner Joseph A. Phillips was offered a position with the Office of the Special Prosecutor in New York State which was subsequently accepted by him.

7. In February 1973, petitioners, Joseph A. Phillips and Elizabeth M. Phillips, returned to New York State. Petitioner Joseph A. Phillips was compensated \$3,000.00 by the United States Congressional Crime Committee for services rendered during the month of January 1973.

CONCLUSIONS OF LAW

A. That the burden is upon any person asserting a change of domicile to show that the necessary intention existed (20 NYCRR 102.2(d)(2) and section 689(e) of the Tax Law).

B. That petitioners, Joseph A. Phillips and Elizabeth M. Phillips, were domiciled in, and a resident of New York State during the entire year 1973 in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That the \$3,000.00 earned during the month of January 1973 must be included in petitioner's New York adjusted gross income pursuant to section 612 of the Tax Law.

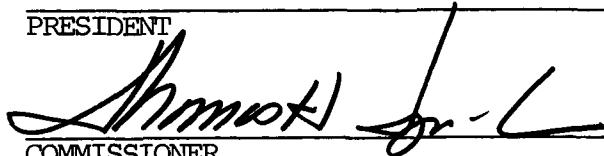
D. That the petition of Joseph A. Phillips and Elizabeth M. Phillips is denied and the Notice of Deficiency issued January 24, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

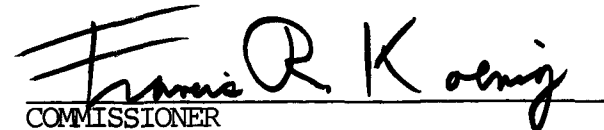
STATE TAX COMMISSION

FEB 20 1981

PRESIDENT



COMMISSIONER



COMMISSIONER

Abstain
James R. Koenig