

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John M. Cantwell : 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

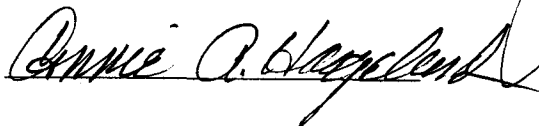
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1982, he served the within notice of Decision by certified mail upon John M. Cantwell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

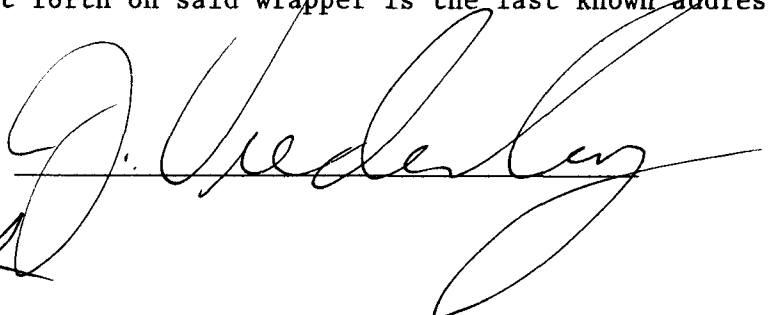
John M. Cantwell
18 Hillside Rd.
Sloatsburg, NY 10974

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
27th day of May, 1982.


Annie A. Haglund



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

May 27, 1982

John M. Cantwell
18 Hillside Rd.
Sloatsburg, NY 10974

Dear Mr. Cantwell:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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	:	
JOHN M. CANTWELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner, John M. Cantwell, 18 Hillside Road, Sloatsburg, New York 10974, 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. 25014).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 8, 1981 at 1:15 P.M. Petitioner John M. Cantwell appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner must report on his separate New York State tax return income earned by his wife from New Jersey sources.

FINDINGS OF FACT

1. Petitioner, John M. Cantwell, timely filed a 1974 New York State income tax return as a full-year resident on March 31, 1975. On said return petitioner indicated his filing status as "Married filing separate Return" and reported total New York income of \$16,961.00.

2. On November 13, 1978 the Audit Division issued to petitioner a Notice of Deficiency asserting that for the year 1974 additional personal income tax

of \$521.03 was due together with interest. Said notice was based on an explanatory Statement of Audit Changes, dated November 21, 1977, wherein petitioner's reported total New York income was increased to \$22,901.00, the amount of Federal adjusted gross income shown on petitioner's 1974 U.S. Individual Income Tax Return. This action was taken as petitioner had failed to reply to an Audit Division letter dated May 10, 1977 inquiring as to the discrepancy between reported Federal and New York State incomes.

3. Petitioner and his wife, Mary E. Cantwell, filed a joint U.S. Individual Income Tax Return reporting an adjusted gross income figure of \$22,901.00. Of the \$22,901.00, \$5,940.00 represented income earned by Mary E. Cantwell entirely from sources outside New York State, while the remaining \$16,961.00 represented income earned by petitioner, John M. Cantwell.

4. Petitioner, John M. Cantwell, and his spouse were experiencing marital problems and separated. Petitioner moved into an apartment located at 1320 Odell Street, Bronx, New York, while Mary E. Cantwell continued to reside in the house jointly owned by her and her husband, said house being located at 392 Hickory Avenue, Paramus, New Jersey. Mary E. Cantwell was a domiciliary and resident of the State of New Jersey for the entire 1974 tax year.

5. Petitioner and Mary E. Cantwell were granted a final judgment of divorce on April 1, 1976 from the Superior Court of New Jersey, Chancery Division. The house located at 392 Hickory Avenue, Paramus, New Jersey was sold on July 15, 1975. On June 21, 1975 petitioner John M. Cantwell individually contracted for the purchase of a new house located in Nanuet, New York.

CONCLUSIONS OF LAW

A. That 20 NYCRR 145.10(c)(1) provides that if a husband and wife file a joint Federal return and if either the husband or wife is a resident and the other is a nonresident of the State, they must file separate New York returns.

B. That income of \$5,940.00 earned by Mary E. Cantwell from sources outside New York State as a nonresident of New York State cannot be included in the total New York income figure reported on petitioner John M. Cantwell's separate New York State resident income tax return.

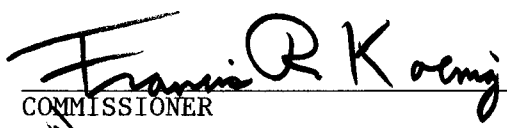
C. That the petition of John M. Cantwell is granted and the Notice of Deficiency dated November 13, 1978 is hereby cancelled.

DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER