

STATE OF NEW YORK  
STATE TAX COMMISSION

*Schary:*  
P.I. - 1970

In the Matter of the Petition

of

DORE AND MIRIAM SCHARY

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

*See Schary*  
*cctH H*  
*99-330*

State of New York  
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon DORE AND MIRIAM SCHARY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Dore Schary  
c/o Bernard Reis and Company  
10 E. 40th Street  
New York, New York 10016  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of December, 1970.

*Arthur Karp*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

DORE AND MIRIAM SCHARY

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING  
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State of New York  
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon DORE AND MIRIAM SCHARY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Louis Bernstein, C.P.A.  
c/o Bernard Reis & Co.  
10 E. 40th Street  
New York, New York 10016  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of December, 1970.

Martha L. L...

Linda Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application  
of

DORE AND MIRIAM SCHARY  
for Revision or Refund of Personal  
Income Taxes under Article 16 of  
the Tax Law for the Year 1959

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DETERMINATION

The taxpayer having filed applications, pursuant to Section 374 of the Tax Law, for refund of taxes paid for the year 1959, and such applications having been denied and a hearing demanded and duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issues in this case are (A) the timeliness of the claim for refund and (B) whether income reported for 1959 should rather properly have been accrued in 1958 under Tax Law Section 367-a and Regulation 20 NYCRR 270.5 (b) because of a change in residence from California to New York on December 31, 1958.

2. The refund requested is \$7,624.00.

3. The taxpayers 1959 return was filed on or before April 15, 1960, and payment made therewith.

4. On November 27, 1961, an additional amount of \$733.31 was paid for 1959 taxes after a recomputation of tax.

5. The application for refund was filed on March 12, 1963.

Upon the foregoing findings and all the evidence in the case the State Commission hereby

DETERMINES:

A. The Application for 1959 is untimely as not filed within two years of the date of the return nor within one year of a recomputation of tax.

B. The exclusion under Tax Law Section 367-a for the year 1959 is not permissible because taxpayers changed their residence in a previous taxable year (1958) and not the current taxable year.

C. The application for refund is denied.

DATED

*December 29, 1970*

STATE TAX COMMISSION

*John P. Sullivan*  
*Charles M. Haley*  
*William K. Korman*