

STATE OF NEW YORK  
STATE TAX COMMISSION

HEARING UNIT - File Copy

TAX Personal Income

NO. 22 FILE NO. 689

In the Matter of the Petition :  
of :  
NORMAN SOLOWE :  
For a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the years 1960 and 1961 :

DECISION  
REASON AND CIRCUMSTANCES  
REMARKS

The taxpayer having filed a petition pursuant to Section 689 of the Tax Law for a redetermination of deficiencies dated May 11, 1964, in personal income taxes imposed by Article 22 of the Tax Law for the years 1960 and 1961 and a hearing having been 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 sole question herein is the resident status of the taxpayer under Tax Law Section 605 for the year 1961. The deficiency for 1960 did not involve residence and has been conceded by taxpayer.
2. During the taxable year in question, the taxpayer held a lease to a three-room, unfurnished apartment at Number 2, Fifth Avenue. The rent for the apartment was paid by Mighty Miss Inc. located in New York City of which taxpayer was a one-third shareholder and secretary-treasurer. The minute books of the corporation recorded the authorization of the rental for corporated purposes.
3. Taxpayer is about forty-five years old and claims to be living with his father in a four-and-a-half room apartment at 802 East Front Street, Plainfield, Union County, New Jersey.

4. Taxpayer had a telephone listing at the Fifth Avenue Apartment.

5. The President of the corporation, a Mr. Sol Meyers stated that the apartment was used not primarily for entertaining customers but rather for the personal convenience of corporate officers. Although this was hearsay as testified to by the tax examiner, the taxpayer has been given the opportunity to submit information after the hearing and no denial or explanation has been forthcoming.

6. The taxpayer did not keep a record as required by Regulations (20 NYCRR 102.2(c)) of his presence in New York. The taxpayer did not appear at the hearing to testify as to his presence in New York although he had been notified of this issue.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission

DECIDES:

A. The taxpayer maintained a permanent place of abode in New York State during 1961.

B. The taxpayer failed to sustain the burden of proof that he was not present in the state for more than 183 days in 1961.

C. The taxpayer is a statutory resident of New York.

D. The deficiency for 1960 is due by concession of the taxpayer.

E. The petition is denied and the notice of deficiency dated May 11, 1964, is affirmed in the amounts shown thereon, \$87.71 for 1960 and \$4495.16 for 1961, together with such interest, if any, as may be lawfully due under Section 684 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

*March 24, 1970*

*Norman Gellman*  
\_\_\_\_\_  
PRESIDENT

*Abigail M. M. M. M.*  
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COMMISSIONER

*Walter K. K.*  
\_\_\_\_\_  
COMMISSIONER