

STATE OF NEW YORK
STATE TAX COMMISSION

Stitt, Austin & Atha
1971, Personal Income

In the Matter of the Petition

of

AUSTIN W. STITT JR. & ATHA B.
STITT

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1964

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

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 29th day of March, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon AUSTIN W. STITT JR. & ATHA B. STITT (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Austin W. & Atha B. Stitt
1804 Malibar Road
Fort Worth, Texas 76116
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

29th day of March, 1971

James H. Tunaro

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
AUSTIN W. STITT JR. & ATHA B. STITT	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
year 1964.	:	

Austin W. Stitt and Atha B. Stitt having filed a petition pursuant to Section 689 of the Tax Law for the redetermination of a deficiency of personal income tax imposed under Article 22 of the Tax Law for the year 1964 and in lieu of a hearing, the file of the Income Tax Bureau pertaining to the said deficiency having been submitted to the State Tax Commission and said file having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether the petitioners, who were domiciliaries of New York State, were exempt from tax during 1964 under Section 605(a)(1) of the Tax Law when they lived on a military base outside of New York State.
2. The deficiency in issue is dated July 31, 1967, and amounts to \$836.10 together with interest and a penalty of \$209.02 under Tax Law Section 685(a) for failure to file a return.
3. During 1964 petitioners were domiciled in New York State.
4. Mr. Stitt filed a joint Federal return with his wife showing as an address, 33 Warran Road, Frewsburg, New York, and showing his occupation as Air Force Officer. They filed no New York return.

5. Petitioners spent less than 30 days in New York State during 1964.

6. In 1964, Mr. Stitt, while a Colonel and a career officer in the United States Air Force, was stationed at Forbes Air Force Base, Kansas, where he and his wife were assigned to quarters at 5 Stanford Circle, Topeka, Kansas located on the Air Force base, which assignment was made under Air Force Regulation 30-06 on the grounds that military operational conditions required that Colonel Stitt, because of his duties, reside on the base. Because of this assignment, Colonel Stitt forfeited his quarters allowance of \$170.10 per month.

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

DECIDES:

A. Petitioners did not sustain the burden of proof that for 1964 they maintained a permanent place of abode outside the State within the meaning of Section 605(a) of the Tax Law. As domiciliaries of New York State, they are therefore taxable as residents of New York State.

B. The failure to file a return was due to reasonable cause and not willful neglect and the penalty is cancelled. The deficiency in the amount of \$836.10 is affirmed together with such interest, if any, as may be due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
March 29, 1971

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Maule

COMMISSIONER

Milton Korman

COMMISSIONER