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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES A. & ELIZABETH HOROWITZ :

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) 1967

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

State of New York
County of Albany

Martha Funaro , 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 16th day of March , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon James A. & Elizabeth Horowitz (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: James A. & Elizabeth Horowitz
Box 2738
Aspen, Colorado 81611

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

16th day of March , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES A. & ELIZABETH HOROWITZ :

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Tax Law for the (Year(s) 1967 :

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State of New York
County of Albany

Martha Funaro , 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 16th day of March , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Louis Sternbach,
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Sternbach, Esq.
10 East 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

16th day of March , 1972.

Ral Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 16, 1972

James A. & Elisabeth Morowits
Box 2738
Aspen, Colorado 81611

Dear Mr. & Mrs. Morowits:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JAMES A. & ELIZABETH HOROWITZ : DECISION

for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1967. :

James A. & Elizabeth Horowitz filed a petition for the redetermination of a deficiency and for refund of personal income tax for the year 1967.

A hearing was held on June 23, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York, New York before Nigel G. Wright, Hearing Officer.

Louis Sternbach, C.P.A. represented the petitioners. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioners, who had been domiciled in New York, changed their domicile in 1967.

FINDINGS OF FACT

1. Mr. Horowitz graduated from West Point and served in the Air Force, reaching the rank of major. While stationed in Germany he wrote a novel, "The Hunters", which was published and later made into a movie. When he left the Air Force in 1957, he took up residence in New York.

2. In 1959 Mr. Horowitz went to Aspen, Colorado, for a few weeks to visit a close friend. He has visited Aspen every summer from 1960 to 1967. In 1961 he purchased an old house in Aspen. Each year through 1966 he made substantial improvements, expanding it from one bathroom and three bedrooms to three bathrooms and six bedrooms. It has always had heat and is a year-round house. In June, 1967 he and his family drove to Aspen, taking with them some personal belongings. They left from Aspen to go to Europe September 1, 1967. At that time the house was rented on a month-to-month lease to one tenant until Mrs. Horowitz returned to it in January, 1969.

3. Mr. Horowitz built his own house on Tweed Boulevard in Nyack, New York in 1966 and lived in it for about six months. His children were in the local schools. By June of 1967 Mr. Horowitz knew that he would be in Europe the next year. He took the children out of school at the end of the semester and got copies of their transcripts for use in other school systems. He states that his wife had become dissatisfied with the Nyack house and a decision was made to move permanently to Colorado. In June, 1967 he removed many of his personal belongings. This was rented out on a year-to-year lease beginning on October 11, 1967. It was partially furnished. He still owns this house though it is now up for sale.

4. At the end of the summer of 1967 Mr. Horowitz and his family left Aspen to commence their trip to Europe. They came to New York and stayed over a few nights in the Nyack house. On September 1, 1967 they sailed from New York City for France where Mr. Horowitz worked as a writer and as a director of movies. He wrote the script for "Downhill Racer" while he was there. He claimed to be qualified as a

resident of France from September for purposes of excluding foreign income from his federal income tax under section 911(c) of the Internal Revenue Code. This exclusion was reflected both in the New York State return as filed and in the computation of the deficiency.

5. Mr. Horowitz's 1967 New York tax return filed in April, 1968 states that he was a resident until August 31, 1967. Mr. Horowitz claims to have registered to vote in Colorado sometime in 1967.

6. The refund in issue amounts to \$1,447.08 claimed on the tax return as filed and arising because of an excess of withholding taxes and estimated taxes over the tax computed on only that part of the total income considered to be earned prior to September 1, 1967. The deficiency in issue is dated May 26, 1969. It arises from determining a tax on Mr. Horowitz's total income for 1967 and amounts to, after withholding and estimated taxes are deducted, \$191.95 plus interest of \$12.82.

CONCLUSIONS OF LAW

The petitioners have not sustained the burden of proof that they changed their domicile in 1967.

DECISION

The petition is denied. The claim for refund is denied. The deficiency is found correct as stated and is due together with such further interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
March 16, 1972

STATE TAX COMMISSION

Norman Ballman

COMMISSIONER

Bruce Mauley

COMMISSIONER

Milton Koern

COMMISSIONER