

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTHER WEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1967, 1968 and 1969.

State of New York
County of Albany

Catherine Steele, 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 4th day of October, 1976, she served the within Notice of Decision by (certified) mail upon Esther Wein (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Esther Wein
210 Lake Shore Drive
Hallandale, Florida 33009 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 (~~representative of the~~) 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

4th day of October, 1976.

Janet Meek

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 4, 1976

TELEPHONE: (518) **457-3850**

✓
Mrs. Esther Wein
210 Lake Shore Drive
Hallandale, Florida 33009

Dear Mrs. Wein:

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

Please take further notice that pursuant to
Section ~~139~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,
Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Enclosed for the Taxing Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESTHER WEIN : DECISION
for a Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under Article 22 :
of the Tax Law for the Years 1967, 1968 and 1969. :

Petitioner, Esther Wein, 210 Lake Shore Drive, Hallandale, Florida 33009, filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1967, 1968 and 1969. (File No. 0-69871322). A small claims hearing was held June 14, 1976 at 2:45 P.M. before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter J. Crotty, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. Was a separation agreement in effect in 1967 and was the amount deposited in a bank account for the petitioner by Alexander Wein in 1967 includible in the gross income of the petitioner for such year?

II. Were the amounts received in 1968 and 1969 as payments under a separation agreement includible in the petitioner's gross income for such years and, if so, what was the amount includible in gross income for the tax year 1968?

III. Was the petitioner a nonresident of New York State for the tax year 1969 and thereby exempt from the imposition of the New York State income tax on the amounts received as periodic payments for such year?

FINDINGS OF FACT

1. Petitioner, Esther Wein, did not file 1967, 1968 and 1969 New York State income tax returns. As a result of Federal information, the Income Tax Bureau requested that returns be filed. Esther Wein subsequently filed New York State resident returns for 1968 and 1969. She did not file a 1967 return. On January 21, 1972, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Esther Wein, showing tax for 1967 of \$240.80, for 1968 \$367.39 and for 1969 \$414.26. Penalty for these years was \$233.66 and interest was \$160.99. The total amount due was \$1,417.10.

2. In 1962, petitioner, Esther Wein, and her husband, Alexander Wein, entered into a separation agreement. Under this agreement, the parties were to live separately and the husband was to pay the wife half of his earnings for her support and maintenance. Subsequently, husband and wife had various reconciliations and separations. The husband maintained a separate place of abode for himself during this time.

3. In 1965, petitioner, Esther Wein, brought a court action against Alexander Wein for monies due and owing under the 1962 agreement. The husband's Bill of Particulars stated that the 1962 agreement was null and void in that after its execution the parties had lived together as husband and wife. The issue as to whether or not the agreement was null and void was not decided by the court because the wife discontinued the action.

4. In 1968, a separation agreement, pursuant to court order, was entered into between the parties which superseded all prior agreements including the 1962 agreement. The husband agreed to pay \$4,000.00 in settlement of any prior agreement. He also agreed to pay 35% of his earnings to petitioner and that each party would pay his or her own taxes.

5. In 1967, petitioner, Esther Wein, received \$8,240.00 from Alexander Wein as separate maintenance under the 1962 agreement. This money was deposited by check to a bank account for the wife to draw against.

6. For 1968, petitioner, Esther Wein, testified that she received \$11,240.00 in alimony payments. The \$4,000.00 difference was back payments owing for separate maintenance. The Income Tax Bureau entered into evidence a letter from petitioner, Esther Wein, in which she stated that she received \$15,240.00 in alimony payments from Alexander Wein in 1968.

7. For 1969, petitioner, Esther Wein, agreed to the amount of alimony shown on the Statement of Audit Changes but claimed that she was not a domiciliary of New York. Petitioner, Esther Wein, owned a mobile home. She paid an average rent of \$63.00 per month to Park Lake Estates and Marina in Florida, from February to the end of year. Petitioner, Esther Wein, owned a house in New York.

She listed it for sale in February, 1969. She continued to pay utilities and kept a telephone in the New York house through the entire year. Petitioner, Esther Wein, had a bank account in New York. She could not say how many days she spent in New York in 1969. On her delinquent return, dated June 7, 1970, petitioner, Esther Wein, used the address of her New York home. This same New York address was used by the Internal Revenue Service in a release of lien dated December 9, 1971.

CONCLUSIONS OF LAW

A. That for 1967 petitioner, Esther Wein, failed to carry the burden of proof required by section 689(e) of the Tax Law that the payments received were not for support and maintenance under a separation agreement as defined by section 71 of the Internal Revenue Code.


B. That for 1968 petitioner, Esther Wein, failed to show that she did not receive \$15,240.00 alimony and did in fact state that she did receive this amount.

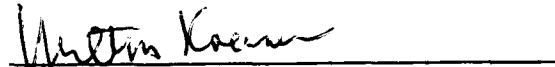
C. That for 1969 petitioner, Esther Wein, was domiciled in New York within the meaning and intent of 20 NYCRR 102.2(d).

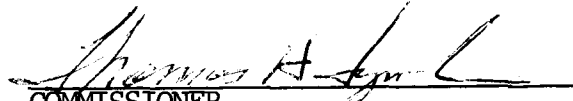
D. That the petition of Esther Wein is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
October 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER