

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF MORTON BERNSTEIN

AND BERTHA BERNSTEIN

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income

Taxes under Article ~~(xx)~~ 22 of the  
Tax Law for the Year(s) ~~xx~~ Period(s)  
1969 and 1970

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that

~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April, 19 77, ~~he~~ served the within

Notice of Decision by (certified) mail upon Bertha Bernstein

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mrs. Bertha Bernstein  
Beverly Wilshire Hotel  
Beverly Hills, CA

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)~~  
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

14th day of April, 19 77

Bruce Batchelor

aret Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF MORTON BERNSTEIN

AND BERTHA BERNSTEIN

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) ~~or Period(s)~~  
1969 and 1970

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that

he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April, 1977, he served the within

Notice of Decision by (certified) mail upon Estate of Morton  
Bernstein (~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Estate of Morton Bernstein  
c/o Harold Gross and Bernard Shields  
2340 South Eastern Avenue  
Commerce City, Los Angeles County, CA

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

14th day of April, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF MORTON BERNSTEIN

AND BERTHA BERNSTEIN

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income

Taxes under Article(\*) 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~

1969 and 1970

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, 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 14th day of April, 1977, She served the within

Notice of Decision by (certified) mail upon Peter Feilbogen, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Peter Feilbogen, Esq.  
4250 Hempstead Turnpike  
Bethpage, New York 11714

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

14th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

April 14, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Mrs. Bertha Bernstein  
Beverly Wilshire Hotel  
Beverly Hills, CA

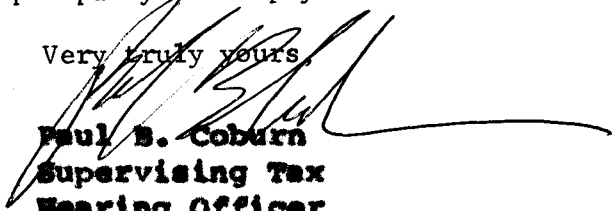
Dear Mrs. Bernstein:

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

Please take further notice that pursuant to  
Section(3) **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,

  
**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

April 14, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Estate of Morton Bernstein  
c/o Harold Gross and Bernard Shields  
2340 South Eastern Avenue  
Commerce City, Los Angeles County, CA  
Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
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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,

Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Solomon Sies, Hearing Officer, on October 19, 1976 at 2:00 P.M. The petitioners appeared by Peter Feilbogen, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Harris Sitrin, Esq., of counsel).

## ISSUES

I. Whether or not the petitioners were domiciliaries of the State of New York in 1969 and 1970.

II. Whether the taxpayers maintained a permanent place of abode within the State of New York in 1969 and 1970.

FINDINGS OF FACT

1. Morton and Bertha Bernstein filed a New York State resident combined income tax return for the year 1969.

2. Morton and Bertha Bernstein filed a nonresident New York State tax return for 1960 showing an overpayment of \$16,664.00, an indicated on the return that such amount was to be refunded. On January 3, 1973, the Department issued a Statement of Refund Adjustment for the year 1970, allowing a partial refund in the amount of \$8,360.22, and disallowing \$8,303.78 of the refund claimed for said year.

3. On June 6, 1972, the taxpayers filed a claim for refund in the amount of \$53,508.70 for the year 1969, on the ground that they were nonresidents in that year and that the 1969 resident return was filed in error. On February 25, 1974, the Department denied the claim for refund for the year 1969.

4. On July 8, 1975, a petition was filed pursuant to section 689(c) of the Tax Law for refund of personal income taxes for the years 1969 and 1970.

5. Morton Bernstein and Bertha Bernstein were both in New York City. In 1950, Mr. and Mrs. Morton Bernstein leased an apartment at 923 Fifth Avenue, New York, New York for a three year term.

They furnished this apartment and made certain changes in the basic construction. The lease of the apartment was renewed every three years.

6. Morton Bernstein was Chairman of the Board of National Silver Industries, Inc. and executive officer of F. B. Rogers Company, Inc., a subsidiary of National Silver. National Silver maintained its corporate headquarters at 241 Fifth Avenue, New York, New York, and its Western Division Headquarters in Los Angeles, California. F. B. Rogers Silver Company, Inc. had offices in Massachusetts. In connection with his employment, Mr. Bernstein was required to travel outside the United States where National Silver had offices, i.e., Tokyo, Japan, Madrid, Spain, Milan, Italy, Zurich, Switzerland. Mrs. Bernstein accompanied her husband on his travels abroad.

7. Mr. and Mrs. Bernstein maintained an apartment in Tokyo, Japan prior to 1968. In April 1968, they leased an apartment in Milan, Italy, which they furnished elaborately. The lease on this apartment was renewed until 1973. While abroad, Mr. Bernstein paid the rent of the apartment in New York City. While the Bernsteins were abroad, the apartment in New York City was occupied by business associates and relatives of Mr. Bernstein. The Bernsteins voted from the Fifth Avenue address when they were in the United States. Mr. Bernstein would return to the United States from time to time to report and to confer with his business associates.



8. The withholding statements attached to the 1969 New York State income tax return indicated the residence address of the petitioners as 923 Fifth Avenue, New York, New York.

9. Morton Bernstein died sometime in 1971. He was buried in Beverly Hills, California and his will was admitted to probate in California.

10. Morton and Bertha Bernstein did not spend more than 30 days in New York State during the years 1969 and 1970.

CONCLUSIONS OF LAW

A. That Mr. and Mrs. Morton Bernstein continued to be domiciliaries of the State of New York in 1969 and 1970.

B. That Mr. and Mrs. Morton Bernstein maintained a permanent place of abode in the State of New York during the years 1969 and 1970.

C. That Mr. and Mrs. Morton Bernstein maintained permanent places of abode in Tokyo, Japan and Milan, Italy.

D. That Mr. and Mrs. Morton Bernstein were New York State residents for the years 1969 and 1970, for income tax purposes, within the intent and meaning of section 605(a)(1) of the Tax Law.

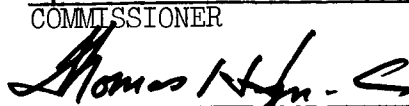
E. That the petition of the Estate of Morton Bernstein and Bertha Bernstein for refund of personal income taxes for 1969 and for partial refund of income tax for 1970 be and the same is hereby denied.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER