

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER BUTENSKY (Deceased)

AFFIDAVIT OF MAILING

and NANCY BUTENSKY

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969 and 1970.

State of New York
County of Albany

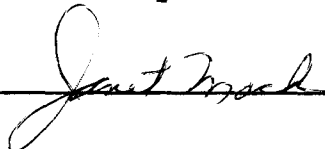
Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of April, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Estate of Meyer Butensky
& Nancy Butensky, ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Estate of Meyer Butensky &
Mrs. Nancy Butensky
1805 Roswell Road
Marietta, Georgia 30060
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



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER BUTENSKY (Deceased):

AFFIDAVIT OF MAILING

and NANCY BUTENSKY

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969 and 1970.

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 Martin Galuskin, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin Galuskin, CPA
Touche Ross & Co.
1633 Broadway
New York, New York 10019
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 Mark



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

April 14, 1977

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

**Estate of Meyer Butensky &
Mrs. Nancy Butensky
1805 Roswell Road
Marietta, Georgia 30060**

Dear Mrs. Butensky:

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

Please take further notice that pursuant to
Section **(N) 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

STATE TAX COMMISSION

In the Matter of the Petition :

of :

MEYER BUTENSKY
and NANCY BUTENSKY :

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1968, 1969 and 1970. :

Petitioners, Meyer Butensky and Nancy Butensky, 1805 Roswell Road, Marietta, Georgia 30060, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 00153).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1976 at 1:15 p.m. Petitioner appeared by Martin Galuskin, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq., of counsel).

ISSUES

I. Whether petitioners, Meyer Butensky and Nancy Butensky, were resident individuals of New York State for the years 1968, 1969 and 1970.

II. Whether petitioner, Meyer Butensky, properly allocated his income for the years 1968, 1969 and 1970.

FINDINGS OF FACT

1. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Meyer Butensky and Nancy Butensky, imposing additional New York State personal income tax for the years 1968, 1969 and 1970 on the ground that petitioners were New York State residents for tax purposes. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$12,834.14, plus interest of \$2,148.55, for a total of \$14,982.69.

2. Petitioner, Meyer Butensky, was president of Branch Motor Express Co., 114 Fifth Avenue, New York, New York, during the years in issue. He divided his time between Miami Beach, Florida and New York City where he had an apartment at 45 Sutton Place South, New York, New York. Petitioners maintained the cooperative apartment in their names in 1968, 1969 and 1970. The Manhattan telephone directory listed them for these years.

3. On May 10, 1967, petitioner, Meyer Butensky, leased apartment No. 1547 in Morton Towers, located at 1500 Bay Road, Miami Beach, Florida for the years 1968 and 1969. The lease was renewed for 1970 and 1971.

4. Petitioner, Meyer Butensky, had bank accounts in Bankers Trust Co., New York, which listed his address as 114 Fifth Avenue, New York, New York, this being his corporate address, and accounts

in Miami Beach at the First National Bank of Miami Beach, Florida, wherein his address was listed as 1500 Bay Road, Apt. 1547, Miami Beach, Florida.

5. Petitioners, Meyer Butensky and Nancy Butensky, filed New York State income tax nonresident returns for the years 1968, 1969 and 1970. He allocated a percentage of his income to New York State.

6. Branch Motor Express Company, 114 Fifth Avenue, New York, New York, had terminals in fifteen (15) cities listed on their stationary. No office or terminal was listed for Miami Beach, Florida during 1968, 1969 and 1970. In addition there was no telephone listing for them in either Miami or Miami Beach, Florida.

7. On December 13, 1967, petitioners, Meyer Butensky and Nancy Butensky, registered to vote in precinct No. 111 from 1500 Bay Road, Miami Beach, Florida.

8. Petitioner, Meyer Butensky, maintained his New York State driver's license during 1968, 1969 and 1970.

9. Petitioner, Meyer Butensky, filed a Tangible Personal Property Tax Return for 1967 in the State of Florida, County of Dade. He also filed a Florida Intangible Personal Property Tax Return for the years 1968, 1969 and 1970. These returns were filed on 1972 forms with the year "1972" crossed out and replaced by 1968, 1969 and 1970, respectively.

10. During the years in issue, petitioner, Meyer Butensky, possessed a will executed in 1959 in New York State as a resident of New York. In August, 1973, he executed a new will which listed his address in Miami Beach. Three witnesses to this will listed their addresses in New York State. He died in 1975 and was buried from a New York City funeral home.

11. Petitioner offered no documentary or other substantial evidence as to the number of days spent without the State of New York during the years in issue.

CONCLUSIONS OF LAW

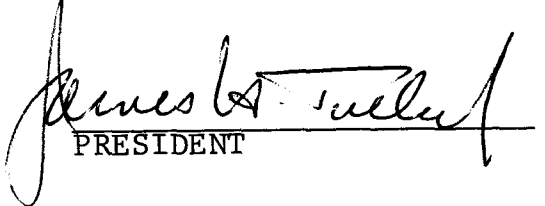
A. That petitioners, Meyer Butensky and Nancy Butensky, were domiciled in New York State during the years 1968, 1969 and 1970.

B. That since petitioners, Meyer Butensky and Nancy Butensky, were domiciliaries of New York State during 1968, 1969 and 1970, and since they maintained a permanent place of abode in New York State, and spent more than thirty days a year in New York State during said years, therefore, they were subject to New York State personal income tax as resident individuals on all their income, including income earned outside of New York State; and that as resident individuals, they may not allocate a part of their income in accordance with the meaning and intent of section 605(a)(1) of the Tax Law.

C. That the petition of Meyer Butensky and Nancy Butensky is denied and the Notice of Deficiency issued January 23, 1973, is sustained.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER