

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
PAUL E. FOLEY and SOPHYE FOLEY :

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) ~~xxx Period(x)~~ :  
1965, 1966, 1967 and 1970

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 Paul E. Foley and  
Sophye Foley (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. and Mrs. Paul E. Foley  
1211 Willow Lane  
Birmingham, Michigan 48009  
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

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of

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Taxes under Article (s) 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1965, 1966, 1967 and 1970

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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 Edmund A. Koblenz, 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. Edmund A. Koblenz, Esq.  
90 State Street  
Albany, New York

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.

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Janet Mack



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

April 14, 1977

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

Mr. and Mrs. Paul E. Foley  
1211 Willow Lane  
Birmingham, Michigan 48009

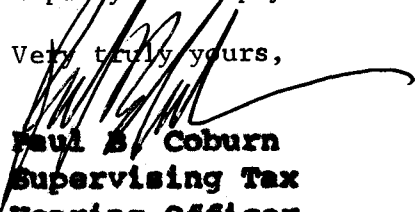
Dear Mr. & Mrs. Foley:

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

Please take further notice that pursuant to  
Section(3) **\$90** 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 E. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

A second formal hearing was held on September 14, 1976, at which time the matter of petitioners, Paul E. Foley and Sophye Foley, for the years 1965, 1966 and 1967 was further considered along with the new

matter of a petition filed by Paul E. Foley and Sophye Foley, for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. This second formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioners appeared by Leonard S. Schwartz, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (James A. Scott, Esq. of counsel).

#### ISSUE

Whether petitioners, Paul E. Foley and Sophye Foley, were statutory residents of New York State during the years 1965, 1966, 1967 and 1970.

#### FINDINGS OF FACT

1. Petitioners, Paul E. Foley and Sophye Foley, filed a New York State income tax nonresident return for the year 1965. They listed their address as 1211 Willow Lane, Birmingham, Michigan on said return. On this same return, petitioners allocated 174 days worked in New York State with income earned inside New York State of \$52,984.74. There was listed \$90,535.60 total Federal income.

2. Petitioners, Paul E. Foley and Sophye Foley, filed a New York State income tax nonresident return for the year 1966. On this return, they listed their address as 1211 Willow Lane, Birmingham, Michigan, and allocated 116 days worked in New York State. There was also listed \$89,523.69 as total Federal income.

3. Petitioners, Paul E. Foley and Sophye Foley, filed a New York State income tax nonresident return for the year 1967. Again they listed their address as 1211 Willow Lane, Birmingham, Michigan. Petitioners allocated 112 days worked in New York State, and \$44,467.00 as income earned inside New York State. There was \$92,874.00 listed as total Federal income.

4. Petitioners, Paul E. Foley and Sophye Foley, filed a New York State income tax nonresident return for the year 1970. They listed their address, on this return, as 1211 Willow Lane, Birmingham, Michigan. On this same return, petitioners allocated 192 days worked in New York State, and \$82,412.00 as income earned inside New York State. There was \$106,449.00 listed as total Federal income.

5. On March 17, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul E. Foley and Sophye Foley, imposing additional income tax for the years 1965, 1966 and 1967 in the sums of \$3,012.54, \$3,736.34, and \$3,751.60 respectively, upon the grounds that petitioners are statutory residents of New York State and, therefore, all income reported for Federal tax purposes is held taxable to New York State. Accordingly, a Notice of Deficiency was issued in the sum of \$11,667.05, with the aforesaid Statement of Audit Changes.

6. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul E. Foley and Sophye Foley,

imposing additional income tax for the year 1970 in the sum of \$2,662.10, upon the grounds that petitioners are statutory residents of New York State and, therefore, all income reported for Federal tax purposes is held taxable to New York State. Accordingly, a Notice of Deficiency was issued in the sum of \$3,140.21, with the aforesaid Statement of Audit Changes.

7. Petitioner, Paul E. Foley, was employed as Chairman of the Board and Chief Executive Officer of McCann-Erickson, Inc. He worked at the offices of McCann-Erickson, Inc. at 485 Lexington Avenue, New York, New York during the years 1965, 1966, 1967 and 1970.

8. Petitioners, Paul E. Foley and Sophye Foley, were domiciled in the State of Michigan for the years 1965, 1966, 1967 and 1970.

9. Petitioner, Paul E. Foley, sublet an apartment at 6 East 81st Street, New York, New York and was reimbursed by McCann-Erickson, Inc. for all expenses of the apartment. Further, this apartment was a permanent place of abode for petitioners, Paul E. Foley and Sophye Foley, in the State of New York in the years 1965, 1966, 1967 and 1970.

10. Petitioner, Paul E. Foley, spent in excess of 183 days, in aggregate, in New York State in each of the years 1965, 1966, 1967 and 1970.

#### CONCLUSIONS OF LAW

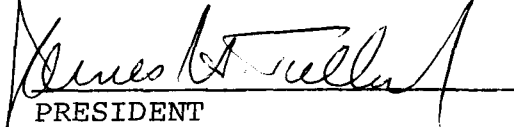
A. That petitioners, Paul E. Foley and Sophye Foley, were statutory residents of New York State in the years 1965, 1966, 1967 and 1970 according to the meaning and intent of section 605(a)(2) of


the Tax Law, and 20 NYCRR 102.2(c) and (e). Accordingly, all income reported by petitioners in the years 1965, 1966, 1967 and 1970 is taxable to New York State.

B. That the petitions of Paul E. Foley and Sophye Foley are denied and the notices of deficiency issued March 17, 1969 and April 12, 1974 by the Income Tax Bureau, are sustained.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER