

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD P. SCULLY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (5X 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1967 and 1968

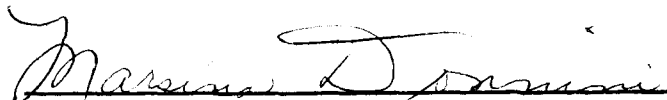
State of New York  
County of Albany

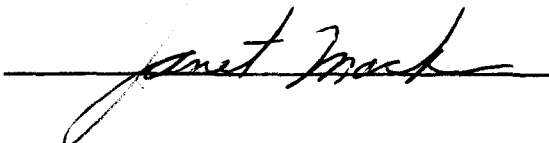
Marsina Donnini, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 30th day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Bernard P. Scully  
~~XXXXXX representative of the~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Bernard P. Scully  
35 Convent Avenue  
Yonkers, New York 10703  
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 ~~XXXXXX representative~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXX representative of the~~ petitioner.

Sworn to before me this

30th day of June, 19 77







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

June 30, 1977

TELEPHONE: (518) 457-1723

Mr. Bernard P. Scully  
35 Convent Avenue  
Yonkers, New York 10703


Dear Mr. Scully:

Please take notice of the <sup>Decision</sup> of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) <sup>690</sup> of the Tax Law, any proceeding in court to review an adverse decision must be commenced within <sup>4 months</sup> 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  
Supervisor of  
Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD P. SCULLY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1967 and 1968.	:	

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Petitioner, Bernard P. Scully, residing at 35 Convent Avenue, Yonkers, New York 10703, has 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 1967 and 1968 (File No. 13733).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 16, 1976 at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (I. A. Levy, Esq. of counsel).

ISSUE

Whether the petitioner was a nonresident of the State of New York for any part of 1968 and 1969.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner, Bernard P. Scully, timely filed New York State income tax resident returns for the years 1967 and 1968, wherein he subtracted on line four the salary income earned in Connecticut. The Income Tax Bureau issued a Notice of Deficiency on March 20, 1972 holding the income earned in Connecticut as fully taxable.

2. The petitioner was a resident of, and employed in the City of Yonkers, New York prior to September, 1967. He resided in and maintained a home inherited from his father.

3. From September, 1967 through June 30, 1968, petitioner was employed in Connecticut. During that time, he occupied a rented room in Connecticut.

4. The petitioner continued to maintain his home in Yonkers, New York and frequently returned there on weekends and on long holidays such as Easter and Christmas.

5. No attempt was ever made to sell his home in Yonkers, New York.

6. Although he rented a garage in Connecticut, his automobile remained registered in New York State.

7. On June 30, 1968, petitioner's one-year contract with his Connecticut employer expired and was not renewed. Attempts to

secure other employment in Connecticut were unsuccessful and as a result petitioner returned to his home in Yonkers, New York.

8. That petitioner, Bernard P. Scully, was a resident of New York State during the years 1967 and 1968, within the meaning and intent of section 605(a) of the Tax Law.

9. That petitioner's Connecticut salary income is taxable on his New York resident tax return in accordance with the meaning and intent of section 612(a) of the Tax Law.

10. That section 612(c) of the Tax Law does not provide for a modification reducing Federal adjusted gross income of a resident for salary earned outside of New York State.

11. That the deficiency for the year 1967 was not assessed within the period of limitation in accordance with section 683(b) of the Tax Law. In addition, since the Connecticut income was disclosed on the return in a manner adequate to apprise the Income Tax Bureau of its nature and amount, the Notice of Deficiency issued March 20, 1972 cannot be justified under section 683(d) of the Tax Law.

12. That the petition of Bernard P. Scully is granted to the extent that the tax liability for the year 1967 is cancelled.

The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 20, 1972; and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
June 30, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER