

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTGER M. SMITH and BEATRIZ C. SMITH

AFFIDAVIT OF MAILING

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)~~ :
1966, 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 16 day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Norton Kern, Esq.,
Reid & Priest (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Norton Kern, Esq.
Reid & Priest
Two Rector Street
New York, 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.

Sworn to before me this

16th day of August, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTGER M. SMITH and BEATRIZ C. SMITH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1966, 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 16 day of August , 19 77, she served the within
Notice of Decision by (certified) mail upon Rutger M. Smith and
Beatriz C. Smith ~~(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. Rutger M. Smith
360 Lexington Avenue
New York, New York 10017

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)~~
~~XXXXXX~~ 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

16th day of August , 19 77.

Marsina Donnini

Janet Muck



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

Mr. and Mrs. Rutger M. Smith
360 Lexington Avenue
New York, New York

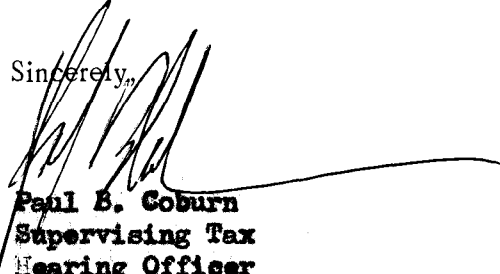
Dear Mr. and Mrs. Smith:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(3)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
RUTGER M. SMITH and BEATRIZ C. SMITH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1966, 1967 and 1968.	:	

Petitioners, Rutger M. Smith, 360 Lexington Avenue, New York, New York 10017, and Beatriz C. Smith, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966. In addition, petitioner, Rutger M. Smith, filed such petitions for the years 1967 and 1968. (File No. 00403).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1976 at 2:45 P.M. Petitioner, Rutger M. Smith, appeared by Norton Kern, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman, Esq., of counsel).

ISSUES

I. Whether petitioners, Rutger M. Smith, and Beatriz C. Smith, were resident individuals of New York in 1966 within the meaning of section 605(a) of the Tax Law.

II. Whether petitioner, Rutger M. Smith, who filed a joint Federal income tax return with his wife, petitioner, Beatriz C. Smith, and a separate New York income tax return, was entitled to exclude or deduct from New York adjusted gross income, amounts paid to his wife pursuant to a separation agreement in the years 1967 and 1968.

FINDINGS OF FACT

1. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed a joint New York State income tax nonresident return for 1966 which showed no tax due and which claimed a refund of \$828.00 for money withheld from Rutger M. Smith's salary.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Rutger M. Smith and Beatriz C. Smith, his wife, stating personal income tax due of \$2,428.52, plus interest to that date of \$423.22, based on petitioners' failure to establish a change in their resident status. Accordingly, a Notice of Deficiency was issued to petitioners on April 13, 1970, asserting tax and interest due in the amounts computed in the Statement of Audit Changes.

3. Petitioner, Rutger M. Smith, filed a New York State resident income tax return for the year 1967, on a form prescribed for married persons filing a joint Federal return who elect to file separate New York returns. No computations regarding Beatriz Smith were made, nor did she sign the return. Attached thereto was a rider which explained that Rutger M. Smith and Beatriz C. Smith had entered into a separation agreement effective August 15, 1967, under which an agreed amount of alimony was to be paid, and that Mrs. Smith had departed this country for Europe. The computation of adjusted gross income contained an adjustment reducing said income by \$13,208.31 paid as alimony under the separation agreement.

4. On May 25, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Rutger M. Smith, stating personal income tax due of \$1,320.83, plus interest to that date of \$167.27, based on the unavailability of a deduction for alimony payments for New York State tax purposes. Accordingly, a Notice of Deficiency was issued on May 25, 1970 to petitioner, Rutger M. Smith, asserting personal income tax due plus interest for 1967 as stated in the Statement of Audit Changes for that year.

5. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed a New York State combined income tax return for 1968 on which their total New York adjusted gross income was \$69,975.88, of which \$26,153.47 was stated to be the adjusted gross income of the wife. That amount

was paid to her by Rutger M. Smith pursuant to a separation agreement described in Finding of Fact "3", supra. Rutger M. Smith adjusted his New York adjusted gross income by the amount of the alimony paid under the separation agreement.

6. On September 28, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Rutger M. Smith, stating additional personal income tax due of \$2,035.39, plus interest to that date of \$177.34, based on the disallowance of the deduction for alimony payments in that no such deduction was taken on the Federal return of petitioner for that year. The Bureau further stated that Article 22 of the Tax Law contains no provision for the modification of alimony under a separation agreement. Accordingly, a Notice of Deficiency was issued on September 28, 1970, to petitioner, Rutger M. Smith, asserting personal income tax and interest for 1968 as stated in the Statement of Audit Changes for that year.

7. On November 9, 1962, the Board of Directors of H. J. Baker & Bro., Inc., the employer of petitioner, Rutger M. Smith, authorized the establishment of a branch office to be located in Brussels, Belgium. Rutger M. Smith was appointed as the head of that office. He was then a vice-president of the corporation.

8. In September of 1962, petitioners, Rutger M. Smith and Beatriz C. Smith, moved to Brussels, Belgium, where in 1963 they entered into a seven-year lease on a house at 77 Rue General Lotz. They furnished the house with their own furniture shipped from the United States, as well as with other furniture which was purchased there. A decorator was hired, floors were scraped and polished, the house was painted and some partitions were removed.

9. While in Belgium, petitioner, Rutger M. Smith, maintained his United States citizenship and did not intend to become a Belgian citizen.

10. The cooperative apartment owned by taxpayers in New York City was placed on the market in 1962 and was sold on January 1, 1964.

11. H. J. Baker & Bro., Inc. rented an office in Brussels, Belgium under a five-year lease with a five-year renewal provision.

12. Petitioners closed all their New York bank accounts in 1963. Petitioner, Rutger M. Smith's only membership in a New York club was permitted to expire in December of 1962. Said petitioner became a member of the following groups in Belgium: Royal Leopold Club (1964); Royal Waterloo Golf Club of Brussels (1965); Circle Prive Couvert, Ave. Louis (1965); Key Club of Brussels (1965).

13. Petitioner, Rutger M. Smith, remained in Belgium under a work permit and an identity card, both of which had to be renewed

annually. While there, he paid Belgium income taxes for each year from 1962 to 1966. He did not vote in any United States elections during those years. On his Statement to Support Exemption of Income Earned Abroad filed with his Federal return, he attached a statement regarding his residence in Belgium and stated therein that "It is my intention to work for my present employer in Belgium for an indefinite period and I have no intention of returning to the United States within the foreseeable future."

14. In 1966, a decision was made by the corporation to close the Belgium office, which was done at the end of that year. Petitioner, Rutger M. Smith, continued on with the corporation's business in Europe and Peru for that year.

15. In June of 1966, the lease on the house in Brussels was cancelled after Rutger M. Smith had provided a new tenant therefor. He then moved the family to an apartment at Odengotten 98 in Stockholm, Sweden.

16. During 1966, Rutger M. Smith was in New York for 9 days in June, 4 days in July, 1 day in November and 10 days in December.

17. Petitioner, Rutger M. Smith, moved back to the United States in 1967 with his wife and daughter, and resided in sublet apartments in New York City while looking for housing in Connecticut.

18. Effective August 15, 1967, the petitioners entered into a separation agreement providing for periodic payments of alimony by Rutger M. Smith.

19. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed joint Federal income tax returns for the years 1967 and 1968. Obviously, no deduction appeared thereon for alimony payments.

CONCLUSIONS OF LAW

A. That the evidence establishing the required intention to effect a change in domicile must be clear and convincing, and the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Bodfish v. Gallman 50 A.D. 2d 457.

B. That petitioners did not effect a change of domicile from New York to Brussels, Belgium in 1966, and were domiciliaries only of New York in that year.

C. That petitioners did not maintain a permanent place of abode in New York for the year 1966; that they did maintain a permanent place of abode elsewhere during such entire year; and that petitioners spent less than 30 days in New York State during the year 1966.

D. That petitioners, Rutger M. Smith and Beatriz C. Smith, were not resident individuals of New York in accordance with the meaning and intent of sections 605(a)(1) and 605(b) of the Tax Law in 1966, and, therefore, are not liable for New York personal income tax for that year.

E. That petitioner, Rutger M. Smith, filed separate New York State personal income tax returns for the years 1967 and 1968.

F. That a husband who determined his Federal income tax on a joint return with his wife, but determines his New York income taxes separately, must determine his New York adjusted gross income separately as if his Federal adjusted gross income had been determined separately. (Tax Law section 612(f)).

G. That the payments made by petitioner, Rutger M. Smith, to Beatriz C. Smith, pursuant to a separation agreement in 1966 and 1967 constituted payments pursuant to U. S. Code, tit. 26, § 71(a)(2), and said payments are to be included in the wife's gross income where separate returns are filed by the husband and wife.

H. That as described in section 71, a husband is allowed a deduction for payments which qualified as 71(a) payments includable in the wife's adjusted gross income where made within the husband's taxable year (U. S. Code, tit. 26, §215).

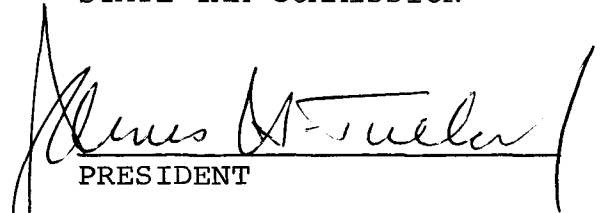
I. That, had petitioners, Rutger M. Smith and Beatriz C. Smith, not filed joint Federal returns but rather had filed separate returns, petitioner, Rutger M. Smith, could have itemized a deduction for the alimony payments which would have been separately reported by Beatriz C. Smith in her adjusted gross income.


J. That such deduction must be afforded to petitioner, Rutger M. Smith, on his New York income tax returns for 1967 and 1968 pursuant to a reasonable construction of section 612(f) of the Tax Law and the appropriate Internal Revenue Code sections discussed above.

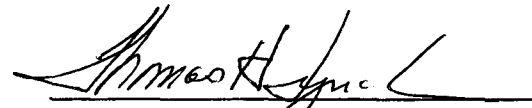
K. That the petitions of Rutger M. Smith and Beatriz C. Smith are granted and the notices of deficiency issued April 13, 1970, May 25, 1970 and September 28, 1970 are cancelled.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

Mr. and Mrs. Rutger M. Smith
360 Lexington Avenue
New York, New York

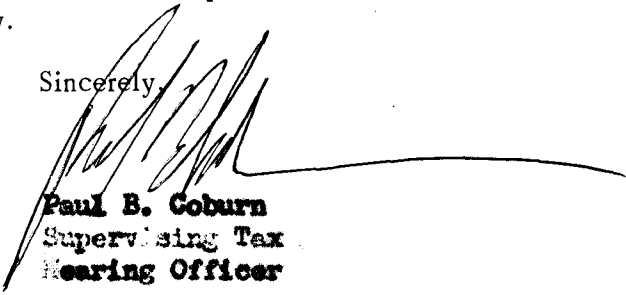
Dear Mr. and Mrs. Smith:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(a)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

RUTGER M. SMITH and BEATRIZ C. SMITH

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1966, 1967 and 1968.

Petitioners, Rutger M. Smith, 360 Lexington Avenue,
New York, New York 10017, and Beatriz C. Smith, filed a petition
for redetermination of a deficiency or for refund of personal
income tax under Article 22 of the Tax Law for the year 1966.
In addition, petitioner, Rutger M. Smith, filed such petitions
for the years 1967 and 1968. (File No. 00403).

A formal hearing was held before Michael Alexander, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York, on October 28, 1976 at 2:45 P.M.
Petitioner, Rutger M. Smith, appeared by Norton Kern, Esq. The
Income Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman,
Esq., of counsel).

ISSUES

I. Whether petitioners, Rutger M. Smith, and Beatriz C. Smith, were resident individuals of New York in 1966 within the meaning of section 605(a) of the Tax Law.

II. Whether petitioner, Rutger M. Smith, who filed a joint Federal income tax return with his wife, petitioner, Beatriz C. Smith, and a separate New York income tax return, was entitled to exclude or deduct from New York adjusted gross income, amounts paid to his wife pursuant to a separation agreement in the years 1967 and 1968.

FINDINGS OF FACT

1. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed a joint New York State income tax nonresident return for 1966 which showed no tax due and which claimed a refund of \$828.00 for money withheld from Rutger M. Smith's salary.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Rutger M. Smith and Beatriz C. Smith, his wife, stating personal income tax due of \$2,428.52, plus interest to that date of \$423.22, based on petitioners' failure to establish a change in their resident status. Accordingly, a Notice of Deficiency was issued to petitioners on April 13, 1970, asserting tax and interest due in the amounts computed in the Statement of Audit Changes.

8. In September of 1962, petitioners, Rutger M. Smith and Beatriz C. Smith, moved to Brussels, Belgium, where in 1963 they entered into a seven-year lease on a house at 77 Rue General Lotz. They furnished the house with their own furniture shipped from the United States, as well as with other furniture which was purchased there. A decorator was hired, floors were scraped and polished, the house was painted and some partitions were removed.

9. While in Belgium, petitioner, Rutger M. Smith, maintained his United States citizenship and did not intend to become a Belgian citizen.

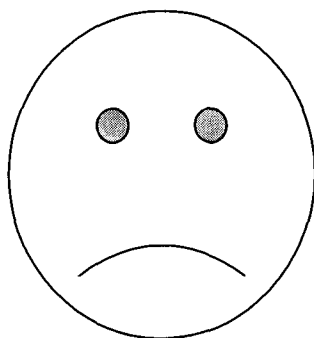
10. The cooperative apartment owned by taxpayers in New York City was placed on the market in 1962 and was sold on January 1, 1964.

11. H. J. Baker & Bro., Inc. rented an office in Brussels, Belgium under a five-year lease with a five-year renewal provision.

12. Petitioners closed all their New York bank accounts in 1963. Petitioner, Rutger M. Smith's only membership in a New York club was permitted to expire in December of 1962. Said petitioner became a member of the following groups in Belgium: Royal Leopold Club (1964); Royal Waterloo Golf Club of Brussels (1965); Circle Prive Couvert, Ave. Louis (1965); Key Club of Brussels (1965).

13. Petitioner, Rutger M. Smith, remained in Belgium under a work permit and an identity card, both of which had to be renewed

CORRECTION FOLLOWS



NOTE: THE FOLLOWING
DOCUMENT(S) ARE BEING REFILMED
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

RUTGER M. SMITH and BEATRIZ C. SMITH

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1966, 1967 and 1968.

Petitioners, Rutger M. Smith, 360 Lexington Avenue,
New York, New York 10017, and Beatriz C. Smith, filed a petition
for redetermination of a deficiency or for refund of personal
income tax under Article 22 of the Tax Law for the year 1966.
In addition, petitioner, Rutger M. Smith, filed such petitions
for the years 1967 and 1968. (File No. 00403).

A formal hearing was held before Michael Alexander, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York, on October 28, 1976 at 2:45 P.M.
Petitioner, Rutger M. Smith, appeared by Norton Kern, Esq. The
Income Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman,
Esq., of counsel).

ISSUES

I. Whether petitioners, Rutger M. Smith, and Beatriz C. Smith, were resident individuals of New York in 1966 within the meaning of section 605(a) of the Tax Law.

II. Whether petitioner, Rutger M. Smith, who filed a joint Federal income tax return with his wife, petitioner, Beatriz C. Smith, and a separate New York income tax return, was entitled to exclude or deduct from New York adjusted gross income, amounts paid to his wife pursuant to a separation agreement in the years 1967 and 1968.

FINDINGS OF FACT

1. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed a joint New York State income tax nonresident return for 1966 which showed no tax due and which claimed a refund of \$828.00 for money withheld from Rutger M. Smith's salary.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Rutger M. Smith and Beatriz C. Smith, his wife, stating personal income tax due of \$2,428.52, plus interest to that date of \$423.22, based on petitioners' failure to establish a change in their resident status. Accordingly, a Notice of Deficiency was issued to petitioners on April 13, 1970, asserting tax and interest due in the amounts computed in the Statement of Audit Changes.

3. Petitioner, Rutger M. Smith, filed a New York State resident income tax return for the year 1967, on a form prescribed for married persons filing a joint Federal return who elect to file separate New York returns. No computations regarding Beatriz Smith were made, nor did she sign the return. Attached thereto was a rider which explained that Rutger M. Smith and Beatriz C. Smith had entered into a separation agreement effective August 15, 1967, under which an agreed amount of alimony was to be paid, and that Mrs. Smith had departed this country for Europe. The computation of adjusted gross income contained an adjustment reducing said income by \$13,208.31 paid as alimony under the separation agreement.

4. On May 25, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Rutger M. Smith, stating personal income tax due of \$1,320.83, plus interest to that date of \$167.27, based on the unavailability of a deduction for alimony payments for New York State tax purposes. Accordingly, a Notice of Deficiency was issued on May 25, 1970 to petitioner, Rutger M. Smith, asserting personal income tax due plus interest for 1967 as stated in the Statement of Audit Changes for that year.

5. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed a New York State combined income tax return for 1968 on which their total New York adjusted gross income was \$69,975.88, of which \$26,153.47 was stated to be the adjusted gross income of the wife. That amount

was paid to her by Rutger M. Smith pursuant to a separation agreement described in Finding of Fact "3", supra. Rutger M. Smith adjusted his New York adjusted gross income by the amount of the alimony paid under the separation agreement.

6. On September 28, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Rutger M. Smith, stating additional personal income tax due of \$2,035.39, plus interest to that date of \$177.34, based on the disallowance of the deduction for alimony payments in that no such deduction was taken on the Federal return of petitioner for that year. The Bureau further stated that Article 22 of the Tax Law contains no provision for the modification of alimony under a separation agreement. Accordingly, a Notice of Deficiency was issued on September 28, 1970, to petitioner, Rutger M. Smith, asserting personal income tax and interest for 1968 as stated in the Statement of Audit Changes for that year.

7. On November 9, 1962, the Board of Directors of H. J. Baker & Bro., Inc., the employer of petitioner, Rutger M. Smith, authorized the establishment of a branch office to be located in Brussels, Belgium. Rutger M. Smith was appointed as the head of that office. He was then a vice-president of the corporation.

8. In September of 1962, petitioners, Rutger M. Smith and Beatriz C. Smith, moved to Brussels, Belgium, where in 1963 they entered into a seven-year lease on a house at 77 Rue General Lotz. They furnished the house with their own furniture shipped from the United States, as well as with other furniture which was purchased there. A decorator was hired, floors were scraped and polished, the house was painted and some partitions were removed.

9. While in Belgium, petitioner, Rutger M. Smith, maintained his United States citizenship and did not intend to become a Belgian citizen.

10. The cooperative apartment owned by taxpayers in New York City was placed on the market in 1962 and was sold on January 1, 1964.

11. H. J. Baker & Bro., Inc. rented an office in Brussels, Belgium under a five-year lease with a five-year renewal provision.

12. Petitioners closed all their New York bank accounts in 1963. Petitioner, Rutger M. Smith's only membership in a New York club was permitted to expire in December of 1962. Said petitioner became a member of the following groups in Belgium: Royal Leopold Club (1964); Royal Waterloo Golf Club of Brussels (1965); Circle Prive Couvert, Ave. Louis (1965); Key Club of Brussels (1965).

13. Petitioner, Rutger M. Smith, remained in Belgium under a work permit and an identity card, both of which had to be renewed

annually. While there, he paid Belgium income taxes for each year from 1962 to 1966. He did not vote in any United States elections during those years. On his Statement to Support Exemption of Income Earned Abroad filed with his Federal return, he attached a statement regarding his residence in Belgium and stated therein that "It is my intention to work for my present employer in Belgium for an indefinite period and I have no intention of returning to the United States within the foreseeable future."

14. In 1966, a decision was made by the corporation to close the Belgium office, which was done at the end of that year. Petitioner, Rutger M. Smith, continued on with the corporation's business in Europe and Peru for that year.

15. In June of 1966, the lease on the house in Brussels was cancelled after Rutger M. Smith had provided a new tenant therefor. He then moved the family to an apartment at Odengotten 98 in Stockholm, Sweden.

16. During 1966, Rutger M. Smith was in New York for 9 days in June, 4 days in July, 1 day in November and 10 days in December.

17. Petitioner, Rutger M. Smith, moved back to the United States in 1967 with his wife and daughter, and resided in sublet apartments in New York City while looking for housing in Connecticut.

18. Effective August 15, 1967, the petitioners entered into a separation agreement providing for periodic payments of alimony by Rutger M. Smith.

19. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed joint Federal income tax returns for the years 1967 and 1968. Obviously, no deduction appeared thereon for alimony payments.

CONCLUSIONS OF LAW

A. That the evidence establishing the required intention to effect a change in domicile must be clear and convincing, and the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Bodfish v. Gallman 50 A.D. 2d 457.

B. That petitioners did not effect a change of domicile from New York to Brussels, Belgium in 1966, and were domiciliaries only of New York in that year.

C. That petitioners did not maintain a permanent place of abode in New York for the year 1966; that they did maintain a permanent place of abode elsewhere during such entire year; and that petitioners spent less than 30 days in New York State during the year 1966.

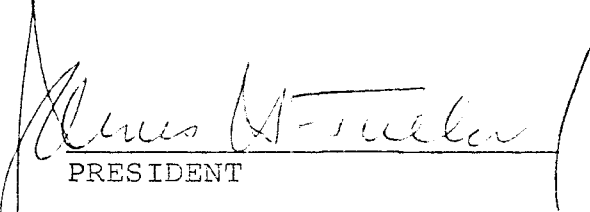
D. That petitioners, Rutger M. Smith and Beatriz C. Smith, were not resident individuals of New York in accordance with the meaning and intent of sections 605(a)(1) and 605(b) of the Tax Law in 1966, and, therefore, are not liable for New York personal income tax for that year.

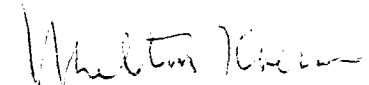
E. That petitioner, Rutger M. Smith, filed separate New York State personal income tax returns for the years 1967 and 1968.

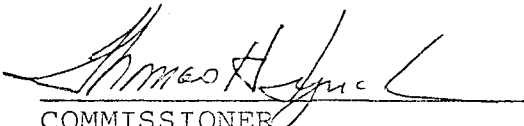
K. That the petitions of Rutger M. Smith and Beatriz C. Smith are granted and the notices of deficiency issued April 13, 1970, May 25, 1970 and September 28, 1970 are cancelled.

DATED: Albany, New York
August 16, 1977

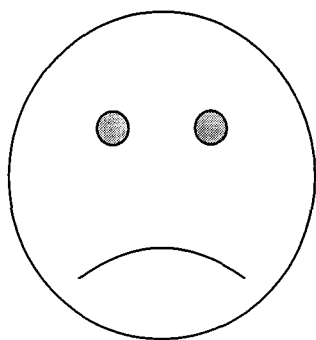
STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

CORRECTION FOLLOWS



NOTE: THE FOLLOWING
DOCUMENT(S) ARE BEING REFILMED
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

19. Petitioners, Rutger M. Smith and Beatriz C. Smith, filed joint Federal income tax returns for the years 1967 and 1968. Obviously, no deduction appeared thereon for alimony payments.

CONCLUSIONS OF LAW

A. That the evidence establishing the required intention to effect a change in domicile must be clear and convincing, and the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Bodfish v. Gallman 50 A.D. 2d 457.

B. That petitioners did not effect a change of domicile from New York to Brussels, Belgium in 1966, and were domiciliaries only of New York in that year.

C. That petitioners did not maintain a permanent place of abode in New York for the year 1966; that they did maintain a permanent place of abode elsewhere during such entire year; and that petitioners spent less than 30 days in New York State during the year 1966.

D. That petitioners, Rutger M. Smith and Beatriz C. Smith, were not resident individuals of New York in accordance with the meaning and intent of sections 605(a)(1) and 605(b) of the Tax Law in 1966, and, therefore, are not liable for New York personal income tax for that year.

E. That petitioner, Rutger M. Smith, filed separate New York State personal income tax returns for the years 1967 and 1968.

F. That a husband who determined his Federal income tax on a joint return with his wife, but determines his New York income taxes separately, must determine his New York adjusted gross income separately as if his Federal adjusted gross income had been determined separately. (Tax Law section 612(f)).

G. That the payments made by petitioner, Rutger M. Smith, to Beatriz C. Smith, pursuant to a separation agreement in 1966 and 1967 constituted payments pursuant to U. S. Code, tit. 26, § 71(a)(2), and said payments are to be included in the wife's gross income where separate returns are filed by the husband and wife.

H. That as described in section 71, a husband is allowed a deduction for payments which qualified as 71(a) payments includable in the wife's adjusted gross income where made within the husband's taxable year (U. S. Code, tit. 26, §215).

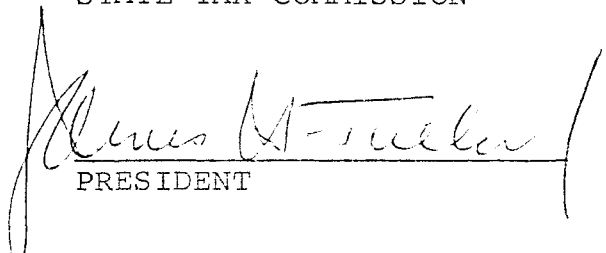
I. That, had petitioners, Rutger M. Smith and Beatriz C. Smith, not filed joint Federal returns but rather had filed separate returns, petitioner, Rutger M. Smith, could have itemized a deduction for the alimony payments which would have been separately reported by Beatriz C. Smith in her adjusted gross income.

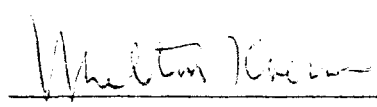
J. That such deduction must be afforded to petitioner, Rutger M. Smith, on his New York income tax returns for 1967 and 1968 pursuant to a reasonable construction of section 612(f) of the Tax Law and the appropriate Internal Revenue Code sections discussed above.

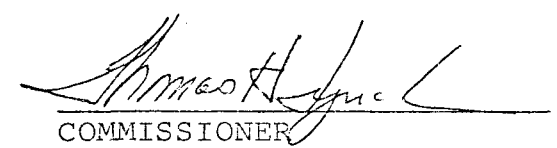
K. That the petitions of Rutger M. Smith and Beatriz C. Smith are granted and the notices of deficiency issued April 13, 1970, May 25, 1970 and September 28, 1970 are cancelled.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Norton Kern, Esq.
Reid & Priest
Two Rector Street
New York, New York



FILED

2