

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRED AND GLORIA BARNICOAT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(a)~~ 22 of the
Tax Law for the Year(s) ~~or years~~
1967 through 1972

State of New York
County of Albany

John Huhn, 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 24th day of April, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Fred & Gloria Barnicoat

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Fred & Gloria Barnicoat
c/o J. Arthur McNamara
78 North Street
Hyannis, Massachusetts 02601

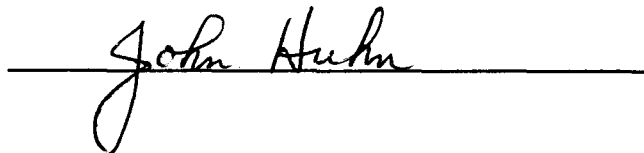
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~or they~~ 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

24th day of April, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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of
FRED AND GLORIA BARNICOAT

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 :
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1967 through 1972

State of New York
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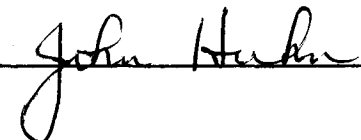
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978 , she served the within
Notice of Decision by (certified) mail upon J. Arthur McNamara
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: J. Arthur McNamara
78 North Street
Hyannis, Massachusetts 02601
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

24th day of April , 1978







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

April 24, 1978

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

**Fred and Gloria Barnicoat
c/o J. Arthur McNamee
78 North Street
Hyannis, Massachusetts 02601**

Dear Mr. & Mrs. Barnicoat:

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(s) **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,


**Joseph Chyorny
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRED BARNICOAT and GLORIA BARNICOAT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967 through 1972.	:	

Petitioners, Fred Barnicoat and Gloria Barnicoat, c/o J. Arthur McNamara, 78 North Street, Hyannis, Massachusetts 02601, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1969, 1970, 1971 and 1972 (File No. 10940).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1976 at 9:15 A.M. The petitioners appeared by J. Arthur McNamara. The Income Tax Bureau appeared by Peter Crotty, Esq. (I. A. Levy, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State during the years 1967 through 1972, inclusive.

FINDINGS OF FACT

1. Petitioners, Fred Barnicoat and Gloria Barnicoat, did not file New York State income tax returns for the years 1967 through 1972. However, they filed Federal income tax returns for these years, on which they listed the address of their representative, J. Arthur McNamara, of Valhalla, New York as their mailing address.

2. The Income Tax Bureau issued a Notice of Deficiency against the petitioners on September 29, 1975 in the sum of \$574.82. Said Notice was issued on the ground that the petitioners were residents of New York State for the years 1967 through 1972 and, therefore, their adjusted gross income for said years was subject to New York State personal income tax.

3. Petitioners were residents of New York State for the year 1966.

4. Petitioners' representative asserted that they were domiciled in the State of Massachusetts during the years 1967 through 1972. However, details as to their conduct, and/or, as to their residency history during these years was limited, generalized and vague.

CONCLUSIONS OF LAW

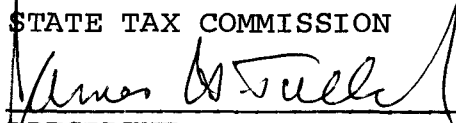
A. That the petitioners have failed to sustain the burden of proof required under section 689(e) of the Tax Law to show that they were not residents of New York State for the years 1967 through 1972. Therefore, they are considered residents of New York State for the years in question in accordance with the meaning and intent of section 605(a) of the Tax Law. Their adjusted gross income is subject to New York State personal income tax in accordance with the provisions of section 612 of the Tax Law.

B. That the petition of Fred Barnicoat and Gloria Barnicoat is denied and the Notice of Deficiency issued September 29, 1975 in the amount of \$574.82 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER