

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENISON W. and ELEANORE S. SCHWEPPE :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~XX~~ 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1970, 1971 and 1972

State of New York
County of Albany

John Huhn , 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 3rd day of May , 19 78, ~~He~~ served the within
Notice of Decision by (certified) mail upon Denison W. &

Eleanore S. Schweppe ~~XXXXXXXXXXXXXXXXXXXX~~ (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Denison W. & Eleanore S. Schweppe
Hamburg Road
Old Lyme, Connecticut 06371

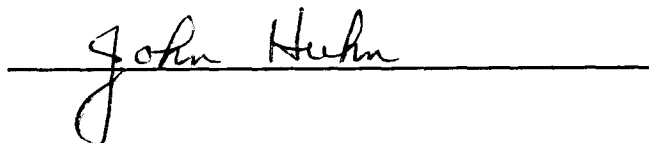
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

3rd day of May , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DENISON W. and ELEANORE S. SCHWEPPE :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal Income** :
Taxes under Article ~~(30)~~ 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1970, 1971 and 1972

State of New York
County of Albany

John Huhn , 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 3rd day of May , 1978, He served the within
Notice of Default Order by (certified) mail upon Sheldon Schwartz, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sheldon Schwartz, Esq.
295 Madison Avenue
New York, New York 10017

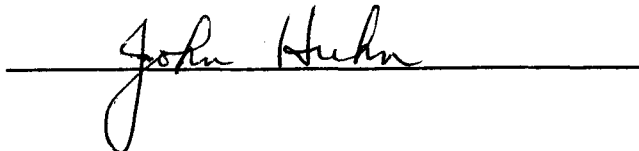
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of 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

3rd day of May , 19 78







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

May 3, 1978

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

Denison W. & Eleanore S. Schweppe
Hamburg Road
Old Lyme, Connecticut 06371

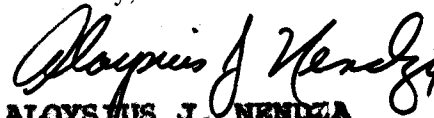
Dear Mr. & Mrs. Schweppe:

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 ~~690~~ **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,


ALOYSIUS J. MENDZA
ASSISTANT DIRECTOR

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

DENISON W. and ELEANORE S. SCHWEPPE : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1970, 1971 :
and 1972. :

Petitioners, Denison W. and Eleanore S. Schweppe, Hamburg Road, Old Lyme, Connecticut 06371, filed an application for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the Years 1970, 1971 and 1972 (File No. 00557).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 3, 1976 at 10:00 A.M. Petitioners appeared by Sheldon Schwartz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner Denison W. Schweppe was and continued to be a domiciliary of the State of New York within the meaning and intent of section 605(a) (1) of the Tax Law for 1970, 1971 and 1972, thus making petitioners liable for personal income tax under Article 22 of the Tax Law for that period, as residents of New York State.

FINDINGS OF FACT

1. Petitioner Denison W. Schweppe is a management consultant whose work requires that he travel to his employer's place of business. During the years at issue, he worked five days a week while so employed in New Jersey, Virginia, Louisiana, Massachusetts, Wisconsin, Mississippi, Connecticut, and New York.

2. Prior to August of 1970, petitioner Denison W. Schweppe worked and lived in Norfolk, Virginia. In August of 1970, he purchased a home in Old Lyme, Connecticut, to which he stated that he tried to return every weekend (whenever possible) from wherever he was living.

3. Petitioners' children spent the summers of the years at issue in Old Lyme, Connecticut; otherwise they were continually in boarding school.

4. Petitioner is registered to vote in Old Lyme, has a Connecticut driver's license, and has his car registered in Connecticut.

5. At various times, petitioner Denison W. Schweppe has registered to vote in Oklahoma and New Jersey.

6. Petitioner Eleanore S. Schweppe spends her weekends in Old Lyme, Connecticut, with petitioner Denison W. Schweppe. That she is a resident of New York within the meaning of section 605 (a) of the Tax Law (and has been continuously since 1962) is not in dispute.

7. During the period 1962 to 1971, Eleanore S. Schweppe's lease on her present residence remained in the names of both petitioners, while the telephone was listed in the name of petitioner Denison W. Schweppe. Petitioner Denison W. Schweppe contended that when he worked in New York City, he would stay with petitioner Eleanore S. Schweppe at her residence. Petitioner Denison W. Schweppe had his Will prepared in New York, and has not changed it.

8. Occasionally, petitioner Denison W. Schweppe spends a day in New York on business. When traveling from a New York airport, he may return to New York late Sunday night and depart via an early morning flight on Monday.

9. Petitioner Denison W. Schweppe worked in New York for part of 1971 and for a few days in 1972.

10. The record and demeanor evidence of petitioner Denison W. Schweppe support the inference that he spent more than thirty days in each of the years at issue in New York and that he was and continued to be a domiciliary of New York State.

CONCLUSIONS OF LAW

A. That petitioner Denison W. Schweppe was and continued to be a domiciliary of the State of New York within the meaning of section 605(a)(1) of the Tax Law for the years 1970, 1971 and 1972; therefore, petitioners Denison W. and Eleanore S. Schweppe are liable for personal income tax as New York residents under Article 22 of the Tax Law.

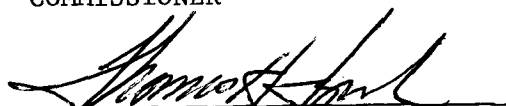
B. That the petition of Denison W. and Eleanore S. Schweppe is denied.

DATED: Albany, New York
May 3, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER