

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK SILVERMAN and LEONA SILVERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(9)~~ 22 of the :  
Tax Law for the Year ~~(S)XXXXPeriod(S)~~ 1967 :

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 13th day of September , 1978, she served the within

Notice of Decision by (certified) mail upon Frank Silverman & Leona

Silverman ~~(Representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

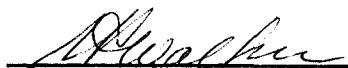
as follows: Frank Silverman & Leona Silverman  
5825 Collins Avenue  
Miami Beach, Florida 33140

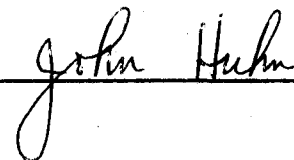
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13th day of September , 19 78





STATE OF NEW YORK  
STATE TAX COMMISSION

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Taxes under Article (e) 22 of the :  
Tax Law for the Year ~~(XXXX Period(s))~~ 1967 :

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 13th day of September , 19 78, He served the within

Notice of Decision by (certified) mail upon Irving P. Baumrind, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed


as follows: Irving P. Baumrind, CPA  
310 Madison Avenue  
New York, New York 10017

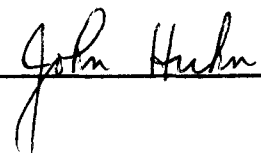
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13th day of September , 1978.







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

**September 13, 1978**

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

**Frank Silverman & Leona Silverman  
5825 Collins Avenue  
Miami Beach, Florida 33140**

**Dear Mr. & Mrs. Silverman:**

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 **(2) 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,

  
**MICHAEL ALEXANDER  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

Whether petitioners had effected a legal change of domicile as well as a change of residence from New York to Florida, prior to or during 1967.

1. On April 6, 1968, petitioners, Frank Silverman and Leona Silverman, filed a New York State nonresident income tax return for 1967. The return did not indicate that petitioners had been New York residents for any portion of the year.

2. The New York State income tax return for 1967 listed total Federal income of \$81,125.16. Wages and salaries that were listed for allocation totalled \$21,000.00. Of 240 days reported as working days by petitioners, 120 days were allocated to New York, resulting in a wage allocation of \$10,500.00. Federal itemized deductions of \$11,009.90 were taken.

3. On April 12, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Frank Silverman and Leona Silverman, asserting additional personal income tax for 1967 of \$6,567.30, plus interest of \$1,179.49, for a total allegedly due of \$7,446.79. As of April 12, 1971, a Statement of Audit Changes originally dated October 3, 1969 was re-dated and issued to petitioners, Frank Silverman and Leona Silverman, his wife. The Statement of Audit Changes showed the recomputation made by the Income Tax Bureau of petitioners' assessed New York State tax liability. It was based on the determinations made by the Income Tax Bureau that petitioners, Frank and Leona Silverman, were considered to be New York State residents for the entire taxable year of 1967.

4. On July 9, 1971, the Income Tax Bureau received a petition from Frank Silverman and Leona Silverman for redetermination or for refund of personal income tax for the year 1967. Petitioners alleged that they had substantiation of their change in residence from New York.

5. Petitioners, Frank Silverman and Leona Silverman, maintained a cooperative apartment in New York City under a lease dated October 13, 1960. Said lease runs to September 30, 2047 from the cooperative tenants corporation which issued 365 shares of stock, evidencing petitioners' ownership of the lease.

6. On September 12, 1967, petitioners, Frank Silverman and Leona Silverman, entered into an agreement to sell their shares in the New York City cooperative, and to assign the lease thereto to the assignee, subject to the approval of the lessor tenants' corporation. The actual sale of the stock and transfer of the lease on the New York City apartment was effected some time in October of 1967. Petitioners' representative claimed that the apartment was actually put up for sale in December of 1966; however, petitioners did not testify or offer documentary evidence in support of their claim.

7. In December of 1966, petitioner Frank Silverman entered into a lease for an apartment in Miami Beach, Florida, for the

period from December 16, 1966 to December 15, 1967. Thereafter, he moved to the same address in Miami Beach, Florida, that petitioner still calls his residence.

8. On January 23, 1968, petitioner Frank Silverman executed and filed a Declaration of Domicile in the State of Florida with officials of Dade County, Florida. Therein, petitioner made a sworn statement that he had changed his domicile and his residence to Miami Beach, Florida, as of October 31, 1967.

9. Petitioner Frank Silverman was a full-time employee of Wendell Fabrics Corporation of New York and of Blacksburg, South Carolina. Except for sales and some financial arrangements in New York, Wendell Fabrics Corporation conducts its operations from Blacksburg, South Carolina. Petitioner Frank Silverman divided his working time almost equally between the two locations of his employer in 1967.

10. On April 6, 1967, the New York accountant for petitioner Frank Silverman mailed the latter's New York City and New York State estimated income tax returns for 1967, as well as the 1966 Federal income tax return and instructions for filing before April 15, 1967 to the petitioner in Miami Beach.

#### CONCLUSIONS OF LAW

A. That petitioners, Frank Silverman and Leona Silverman, failed to offer documentary or other proof of their alleged intent

to change their domicile and residence from New York to Florida, which antedated the positive act of registering their change of domicile on January 23, 1968, effective October 31, 1967. On that January 1968 date, petitioners could have had no ulterior purpose insofar as New York State income tax was concerned.

B. That apart from however long the petitioners, Frank Silverman and Leona Silverman, may have maintained residence in Miami Beach, Florida, their domicile was changed from New York to Florida on October 31, 1967.

C. That pursuant to section 654(a) of Article 22 of the Tax Law, an individual who changes his status from resident to non-resident during the taxable year, must file two tax returns for that year. Such an individual is required to file one return as a resident (here from January 1, 1967 through October 30, 1967) and another return as a nonresident (the balance of 1967).

D. That from the information contained on Form IT-203 filed April 6, 1968, the Income Tax Bureau is directed to recompute the New York State income tax due from petitioners, based on two returns for Frank Silverman and Leona Silverman for the year 1967, in accordance with section 654 of the Tax Law, and that it issue a revised determination of deficiency in income tax.

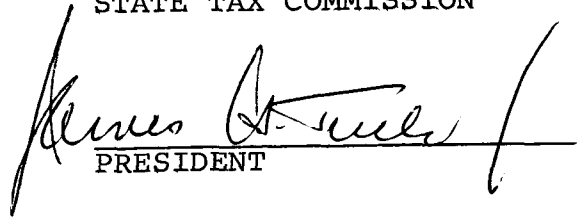
E. That the petition of Frank Silverman and Leona Silverman, for redetermination of the deficiency assessed April 12, 1971



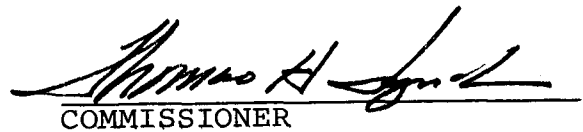
is granted to the extent that petitioners are to be deemed nonresidents of New York State after October 31, 1967, but that, except as so granted the petition of Frank Silverman and Leona Silverman is in all other respects denied.

DATED: Albany, New York  
September 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER