

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE C. BURR

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

AFFIDAVIT OF MAILING

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 6th day of April , 1979 , she served the within
Notice of Decision by (certified) mail upon Lawrence C. Burr
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lawrence C. Burr
1135 Manor Avenue
Bronx, New York 10472

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)~~
~~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

6th day of April , 1979.

Marilyn J. Papneain

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE C. BURR

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 :
Tax Law for the Year(s) ~~xxxxxx~~ 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 6th day of April , 1979, she served the within
Notice of Decision by (certified) mail upon Myron Finkelstein

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Myron Finkelstein, CPA
295 Montgomery Street
Bloomfield, New Jersey 07003

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

6th day of April , 1979.

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

**Lawrence C. Burr
1135 Manor Avenue
Bronx, New York 10472**

Dear Mr. Burr:

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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LAWRENCE C. BURR : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1978 at 9:15 A.M. Petitioner appeared pro se and by Myron Finkelstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether petitioner's wife, Mildred S. Burr, was a resident of New York State during 1972 and, if she was not, whether her items of income, loss and her exemption were reportable on the personal income tax return filed by petitioner.

FINDINGS OF FACT

1. Petitioner, Lawrence C. Burr, timely filed a New York State personal income tax return for 1972. The names of petitioner and his wife, Mildred S. Burr, were both reported in the heading of said tax return and the box indicating "Married-filing joint Return" was checked. Petitioner's wife did not sign the tax return, nor was her wage and tax statement attached.

2. Petitioner, Lawrence C. Burr, and his wife filed a joint Federal income tax return, on which they included their wage income, interest income and loss from rental property which was jointly owned.

3. On the New York State return, petitioner did not report his wife's wages or her interest income. He claimed the total loss on the rental property, his wife as an exemption, and all itemized deductions that appeared on the Federal tax return.

4. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1972, on which it contended that petitioner's wife was a resident of New York State. It recomputed their New York tax liability on a joint basis, including in income, the wife's wage and interest income previously omitted. Adjustments were also made for life insurance and for state and local income tax modifications which are not at issue. Said Notice of Deficiency asserted personal income tax of \$2,279.51, plus interest of \$489.46, for a total of \$2,768.97.

5. For many years prior to and including 1972, petitioner and his wife were married but living apart by consent. Petitioner lived and worked in New York State and his wife and two children lived in New Jersey. Petitioner visited his wife in New Jersey on weekends. She did not come into New York during the year at issue, nor did she have a permanent place of abode in New York State.

6. Petitioner's wife worked for the Board of Education in the City of East Orange, where her children attended school. She was a registered voter in New Jersey and owned her own car. She lived in a permanent place of abode in East Orange for many years and had a bank savings account and a checking account in New Jersey. She also had charge accounts at various New Jersey stores.

7. Petitioner and his wife had four bank savings accounts, two of which were in petitioner's name, one account in his wife's name and one in both names. Petitioner's share of the interest income from the savings accounts was \$79.02.

8. Petitioner owned rental property in his own name and jointly owned three other rental properties with his wife. All such properties sustained rental losses, of which petitioner's share was \$8,495.62.

9. A computation of petitioner's separate income tax liability based on his wages, interest income and rental loss, exclusive of his wife's exemption, results in a deficiency of \$386.75.

CONCLUSIONS OF LAW

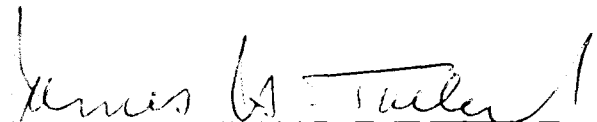
A. That petitioner's wife, Mildred S. Burr, was not a resident of New York State during 1972, within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2(b).

B. That the petition of Lawrence C. Burr is granted to the extent that the income, loss and personal exemption of his wife are not reportable on his personal income tax return; thus, the recomputation of his separate tax liability results in a reduction of the tax shown due on the Notice of Deficiency. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 24, 1976 from \$2,279.51 to \$386.75, together with such interest as may be lawfully owing, but that, except as so granted, the petition is in all other respects denied.

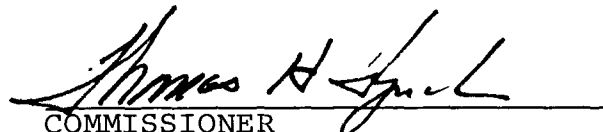
DATED: Albany, New York

STATE TAX COMMISSION

April 6, 1979


PRESIDENT


COMMISSIONER


COMMISSIONER