

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Jack B. & Evelyn Richman :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1968 - 1970. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, 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 15th day of February, 1980, he served the within notice of Decision by certified mail upon Jack B. & Evelyn Richman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Jack B. & Evelyn Richman  
2501 S. Ocean Dr.  
Hollywood, FL 33019

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of February, 1980.

Joanne Krupp



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

February 15, 1980

Jack B. & Evelyn Richman  
2501 S. Ocean Dr.  
Hollywood, FL 33019

Dear Mr. & Mrs. Richman:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

2. On June 23, 1971, petitioners filed an amended nonresident return for 1968 based on their contention that the original return was erroneously

prepared since they had changed their domicile and residence to the State of Florida on December 1, 1967. On said amended return, petitioners incorporated Federal audit adjustments in the sum of \$11,478.03. Said adjustments were the basis of a Notice of Additional Tax Due, Form IT-37 FC, issued May 5, 1971, which asserted an additional tax due of \$887.80, plus interest of \$262.25, for a total due of \$1,150.05. Petitioners paid \$74.00 which represented the balance shown due on their 1968 amended return. Said payment was credited toward the balance due per IT-37 FC.

3. On February 4, 1971, petitioners filed an amended Income Tax Nonresident Return for 1969 in conjunction with Form IT-113X, "Claim for Credit or Refund of Personal Income Tax". On said return, petitioners computed a refund due of \$1,414.00. On October 10, 1972, the Income Tax Bureau mailed a "Waiver of Statutory Notification of Claim Disallowance" to petitioners denying, in full, their claim for refund for 1969. Additionally, a Statement of Refund Adjustment was issued for 1970 wherein the Bureau recomputed petitioners' tax on the basis that they were residents of New York for the entire year. Based on such computation, it was determined that the correct refund was \$927.88 rather than \$1,578.00, as claimed on their return. The correct refund, as determined by the Income Tax Bureau, was then applied to outstanding liabilities for 1963 through 1969. On February 26, 1973, the Income Tax Bureau mailed a Notice of Disallowance to petitioners for 1969 and 1970 wherein the Bureau disallowed refunds of \$1,414.00 and \$650.12, respectively.

4. Prior to and including taxable year 1967, petitioners resided in a home which they owned, located at 144 Kingsberry Road, New Rochelle, New York.

5. Petitioners contended that on December 1, 1967 they moved from their house in New Rochelle to an apartment located at 2501 South Ocean Drive, Hollywood, Florida. The lease for the Florida apartment was obtained in the name of petitioner Jack B. Richman's employer, the Richman Brokerage Company, Inc. Mr. Richman paid the rent on this apartment although the lease was not in his name. To date, petitioners continue to reside at this address.

6. In March, 1968, petitioners transferred the deed for their New Rochelle home to their son, Benjamin Richman.

7. On November 1, 1968, petitioner Jack B. Richman executed a two-year lease for an apartment located at 69 Fifth Avenue, New York City. Petitioner claims that this apartment was obtained for his son, David, who was a minor at the time. Petitioner paid the rent through March, 1969, at which time said apartment was turned over to the Richman Brokerage Company, Inc. Although David Richman resided at the apartment through June, 1970, the corporation paid the rent from March 1, 1969 through the expiration of the lease.

8. Petitioners' original resident returns for 1968 and 1969 listed 69 Fifth Avenue as their home address.

9. During 1968, petitioner Jack B. Richman was an officer and stockholder of the Richman Brokerage Company, Inc., a New York corporation, and was paid a salary of \$26,000.00 for services he rendered as the company's southern representative. His duties were to entertain clients and prospective clients mainly in the State of Florida.

10. During 1968, petitioners spent 156 days in New York State. One extended stay in New York commenced June 12, 1968 through November 5, 1968, during which period petitioners subleased an apartment at 41 Park Avenue for about two months. They also spent time at the Fifth Avenue Hotel in New York City.

11. During 1969, petitioner Jack B. Richman received a salary in the amount of \$13,500.00 from the Richman Brokerage Company, Inc. He also received \$3,250.00 from Richman Organization, Inc., the successor to Richman Brokerage. Petitioner's wage and tax statements from both employers for 1969 listed 69 Fifth Avenue as his address.

12. Petitioners spent 157 days in New York State during 1969. During their New York visits, they stayed, in addition to other places, at 69 Fifth Avenue.

13. During 1970, petitioner Jack B. Richman received a salary from Richman Organization, Inc., in the amount of \$22,250.15. Petitioners' son, Benjamin Richman, was the president and sole stockholder of Richman Organization, Inc.

14. During 1970, petitioners spent 78 days in New York State, part of which were spent at 69 Fifth Avenue.

15. Petitioners filed a Declaration of Domicile with the State of Florida on December 11, 1970.

16. Petitioner Jack B. Richman contended that he executed a will in the State of Florida.

17. Petitioners filed a Florida State Intangible Tax Return for 1969 and 1970.

18. Petitioner Jack B. Richman had a Florida driver's license.

19. Petitioners maintained New York State bank and brokerage accounts during the years at issue.

#### CONCLUSIONS OF LAW

A. That petitioners, Jack B. Richman and Evelyn Richman, did not sustain the burden of proof imposed by section 689(e) of the Tax Law to show that, during the years at issue, they had abandoned their New York domicile and

established a bona fide residence in the State of Florida. Therefore, they were taxable as residents of New York State during 1968, 1969 and 1970 within the meaning and intent of section 605(a) of the Tax Law.

B. That 20 NYCRR 102.2(b) provides as follows:

"any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State."

C. That petitioners spent more than 30 days in New York State during each of the years 1968, 1969 and 1970 and, as a result, they are deemed to be residents of New York State.

D. That the amount of tax shown due on the Notice of Additional Tax Due issued on May 5, 1971 for 1968 shall be reduced to the extent of \$74.00 as stated in Finding of Fact No. "2", supra; that said notice, with the Notice of Disallowance issued on February 26, 1973 for 1969 and 1970, are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 15 1980

STATE TAX COMMISSION

  
PRESIDENT

COMMISSIONER

  
COMMISSIONER