

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID JOSEFOWITZ

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Lynn Wilson , 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 , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon DAVID JOSEFOWITZ

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

wrapper addressed as follows: Mr. David Josefowitz  
c/o Arthur A. Feder, Esq.  
1 Chase Manhattan Plaza

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
New York, New York 10005  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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 , 19 72

Martha Funes

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

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OF NOTICE OF DECISION  
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State of New York  
County of Albany

Lynn Wilson , 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 , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon ARTHUR A. FEDER, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Arthur A. Feder, Esq.

1 Chase Manhattan Plaza  
New York, New York 10005

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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 , 19 72

Arthur Feder

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**April 6, 1972**

**Mr. David Josefowits  
c/o Arthur A. Feder, Esq.  
1 Chase Manhattan Plaza  
New York, New York 10005**

**Dear Mr. Josefowits:**

Please take notice of the **DETERMINATION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**375** of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within **90 days** after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**L. Robert Leisner**

Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
DAVID JOSEFOWITZ : DETERMINATION  
for a Revision or Refund of Personal :  
Income Taxes under Article 16 of the :  
Tax Law for the Year 1959. :  
:

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David Josefowitz applied for a revision of personal income tax for the year 1959. A formal hearing was held in the offices of the State Tax Commission, 80 Centre Street, New York, New York on March 10, 1970. The taxpayer was represented by Vincent Fitzpatrick, Esq. and Leonard Schneidman, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUES

- I. Was the applicant a "resident" of New York State for income tax purposes for the entire year 1959?
- II. Did the taxpayer change his domicile to Geneva, Switzerland, on July 28, 1959?
- III. Was the taxpayer's gain on the sale of Dollar Vitamin Plan, Inc. in 1959 subject to New York State income tax?
- IV. Were all salaries, dividends and interest received by taxpayer in 1959 subject to New York State income tax?

FINDINGS OF FACT

1. Taxpayer filed a New York State income tax return for the year 1959. In that return, taxpayer reported his status to be that of a resident only for the period up to and including July 28, 1959.
2. By agreement, the period within which an assessment could be made against the taxpayer with respect to the year 1959 was extended to April 15, 1965. On December 14, 1964, a Notice of Additional Assessment of Income Tax against the taxpayer for the year 1959 was issued under Assessment No. AB FA 2693. As a result

of a field audit it was held that the taxpayer was a resident of New York State for income tax purposes for the entire year 1959.

3. On January 5, 1965, taxpayer filed an application for revision or refund of personal income taxes for the year 1959, following which an informal hearing was held. On or about January 30, 1967, the application was denied in full.

4. Thereafter on April 17, 1967, the taxpayer timely filed a demand for a hearing. A formal hearing was held on March 10, 1970.

5. The taxpayer's position throughout was: first, that he ceased to be a resident of New York State and changed his domicile on July 28, 1959, the day he left New York with his family and that he spent less than one hundred eighty three days in New York State; second, this change of domicile and residence occurring prior to August 7, 1959, the date of the sale by taxpayer of the common stock of Dollar Vitamin Plan, Inc., that the gain on this sale was not subject to New York State income tax; and third, that only salary, dividends and interest accrued prior to July 28, 1959, are subject to New York State income tax.

6. The taxpayer was born in Lithuania in 1918 and grew up in Europe. In 1930 his family moved to Lausanne, Switzerland, and taxpayer lived there until 1938, when the family moved to the United States. During his teenage years, the taxpayer lived and went to school in Switzerland.

7. The taxpayer's wife was born in Germany in 1930 and lived there until 1939, when her family moved to the United States.

8. In 1938 the taxpayer attended Massachusetts Institute of Technology. In 1941 taxpayer completed his studies at that school and continued his studies, research and teaching at Brooklyn Polytechnic Institute. In 1945 the taxpayer obtained a Ph.D in Chemistry from Brooklyn Polytechnic Institute.

9. The taxpayer became a United States citizen in 1945.

10. The taxpayer and his wife were married in 1949. They have three children.

11. During the 1950's, the taxpayer had been engaged in three principal family businesses, a mail order vitamin business operating primarily in the United States and Canada; a mail order record and vitamin business operating throughout Europe; and a wholesale chemical business which purchased most of its supplies in Europe and sold them in the United States.

12. The taxpayer became increasingly involved in the European aspects of the family businesses. For example, he acted as the liason with the European suppliers in the chemical business and personally conducted negotiations with the European artists and supervised all recording sessions in connection with the European record business.

13. Negotiations began in the summer of 1958 for the sale of the family vitamin business operated in the United States. The sale took place on August 7, 1959, when the taxpayer, along with other members of the Josefowitz family, sold their common stock in the Dollar Vitamin Plan, Inc. Beginning some time prior to the date of that sale and continuing thereafter, the taxpayer was principally occupied with the European businesses conducted by the family.

14. The taxpayer, his wife and his children, left New York State for Geneva, Switzerland on July 28, 1959, intending to permanently reside in Geneva.

15. The taxpayer received \$48,119.01 dividends and \$5,028.50 in interest in 1959.

16. The taxpayer received \$42,000.00 in salaries in 1959, of which the amount, \$24,250.00 was for the period January 1, 1959, to the end of July, 1959.

17. The taxpayer was in Europe from about January 21, 1959 to June 17, 1959. In February 1959, the taxpayer was in Geneva and had begun to actively prepare to move himself and his family to Geneva permanently. On May 23, 1959, an application for residence permit in Geneva, Switzerland was filed on the taxpayer's behalf. On July 25, 1959, notification was received from the Geneva Department of Justice & Police, Inhabitant's Control Office, that the taxpayer's application had been favorably accepted. On July 28, 1959, the entry permit was issued to the taxpayer and his family, authorizing them to enter Switzerland and "establish domicile" in Geneva. This permit is still valid and the evidence indicates that it is the most permanent type of residence authorization a noncitizen of Switzerland can have. On August 15, 1959, a stay and work permit was issued to the taxpayer which is still valid.

18. The taxpayer spent less than 183 days in the State of New York in 1959.

19. In June, 1959, the taxpayer entered into a contract for the purchase of a cooperative apartment in Geneva (before he moved from New York). The taxpayer bought this apartment with the intention of residing there after arrival in Geneva. After arrival in Geneva, the taxpayer learned that the construction of the apartment house in question had not proceeded according to plan. The apartment would only be ready approximately one year later than expected. At that time the taxpayer was unable to find any large apartment for rent on a permanent basis. The taxpayer rented a furnished four-room flat while seeking a more substantial residence in Geneva. Several months later he found a house for sale which he purchased in November 1959, selling the rights to the cooperative apartment. After the purchase of the house, a great deal of additional work was done on it to make it exactly suitable for the taxpayer's family. In 1964, the taxpayer began construction of a

new house in which he has resided since its completion.

20. All of the taxpayer's personal belongings, furniture and paintings, as well as those of his family, were moved to Switzerland at the time he left the United States in July of 1959. These belongings entered Switzerland without the imposition of any Swiss taxes or duties because of the permanent nature of the taxpayer's stay.

21. When the taxpayer left the State of New York, he gave up membership in the Congregation of Temple Emanuel. In Geneva, he and his wife became a part of the Geneva social community, joined a synagogue, and the local charitable and educational organizations. He is also a member of the Eaux-Vives tennis and sports club. The taxpayer, upon arrival, immediately enrolled his three children in the French section of the "Ecole Internationale". The taxpayer elected to have his children take the curriculum leading to the French Swiss "Maturite" diploma which prepares them for admission to European institutions of higher learning, rather than the curriculum, also available, which would have prepared them for admission to a United States college.

22. The taxpayer's principal place of employment has been at Geneva, Switzerland from and after July 28, 1959.

23. From July 1959, to date the taxpayer has been in the United States for a total of not more than 60 days.

24. In 1963, the taxpayer renounced his United States citizenship and he became an Israeli citizen. Subsequently, he became a citizen of France.

#### CONCLUSIONS OF LAW

A. The taxpayer applicant was not a resident of New York State for income tax purposes for the entire year 1959.

B. The taxpayer permanently changed his domicile from New York to Geneva, Switzerland on July 28, 1959.



C. The taxpayer was not a resident of New York State after July 28, 1959, within the meaning of section 350 of the Tax Law. The petition is sustained with respect to gain on the sale on August 7, 1959, of the stock of Dollar Vitamin Plan. That gain is not subject to New York State income tax.

D. The taxpayer's application with respect to salaries is sustained. It is determined that only the portion of salaries received during the period January 1959 to July 1959, \$24,250.00 is taxable for the year 1959.

E. Of the \$48,119.01 in dividends and the \$5,028.50 in interest determined to be taxable, no evidence has been presented to show how much of the dividends or interest accrued after July 28, 1959. The taxpayer's application respecting dividends and interest is denied.

F. The application is in all other respects denied.

G. Pursuant to the Tax Law, interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York

*April 6, 1972.*

STATE TAX COMMISSION

*Norman Galtman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kerner*  
\_\_\_\_\_  
COMMISSIONER