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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**October 25, 1974**

**Mr. and Mrs. Kurt L. Komarek**  
**AM Modenapark 13**  
**A-1030 Vienna, Austria**

**Dear Mr. and Mrs. Komarek:**

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

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

*L. Robert Leisner*  
**L. Robert Leisner**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
KURT L. KOMAREK and MADELEINE KOMAREK : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Year 1970. :

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Petitioners, Kurt L. Komarek and Madeleine Komarek, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 0-69265830). A formal hearing on the petition was scheduled before Honorable A. Bruce Manley, Commissioner, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for November 19, 1973, at 11:45 A.M. On October 30, 1973, the petitioners, in writing, waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

#### ISSUES

I. Was petitioners, Kurt L. Komarek and Madeleine Komarek, resident individuals of New York State during the year 1970?

II. Was \$1,417.00 received by petitioners from International Business Machines Corporation properly excluded from adjusted gross income as moving expenses?

#### FINDINGS OF FACT

1. Petitioners, Kurt L. Komarek and Madeleine Komarek, filed a New York State income tax resident return for the period from June 29, 1970 to September 25, 1970. They reported as total

New York income on said return, the salary income received by petitioner, Kurt L. Komarek, from International Business Machines Corporation (hereinafter referred to as IBM) from June 29, 1970 to September 25, 1970. They omitted from total New York income all of their additional income earned in Austria. Petitioners also deducted as moving expenses, \$1,417.00, which was paid to them by IBM.

2. On October 30, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Kurt L. Komarek and Madeleine Komarek, imposing New York State personal income tax upon all of their income for the year 1970, upon the grounds that they were residents of New York State during the entire year. The Income Tax Bureau also disallowed the deduction for moving expenses, and accordingly issued a Notice of Deficiency in the sum of \$606.77. They conceded that the sum of \$1,417.00 was not deductible as a moving expense, but contended that it was deductible as a business traveling expense.

3. Petitioner, Kurt L. Komarek, is an Austrian citizen and a professor at the University of Vienna. Prior to 1966, he taught at New York University. He took a leave of absence in 1966 to go to Vienna, where he has remained.

4. Petitioner, Kurt L. Komarek, held a summer faculty position with IBM Research at Yorktown Heights, New York, from June 29, 1970 to September 25, 1970. He spent more than 30 days within the state in the year in question.

5. Petitioner, Kurt L. Komarek, failed to submit any documentary or substantial evidence to show what percentage of the sum of \$1,417.00 paid him by IBM for traveling expenses was for his personal travel and what percentage was for his family.

CONCLUSIONS OF LAW

A. That petitioners, Kurt L. Komarek and Madeleine Komarek, were domiciled in New York State for the entire year of 1970.

B. That since petitioners, Kurt L. Komarek and Madeleine Komarek were domiciled in New York State during the entire year of 1970, and spent more than 30 days in New York State during said year, therefore, they were resident individuals within the meaning and intent of section 605(a)(1) of the Tax Law.


C. That petitioners, Kurt L. Komarek and Madeleine Komarek, failed to substantiate alleged deductions for business travel expenses for the year 1970, within the meaning and intent of section 162(a)(2) of the Internal Revenue Code, since they did not submit documentary or substantial evidence to support their claim and accordingly such deductions were properly disallowed by the Income Tax Bureau and the amounts properly included in total New York income.

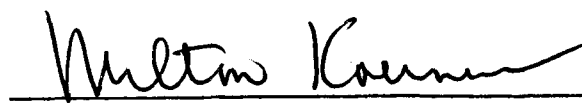
D. That the petition of Kurt L. Komarek and Madeleine Komarek is denied and the Notice of Deficiency issued October 30, 1972, is sustained.

DATED: Albany, New York  
October 25, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER