

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY T. DICK and LILJA H. DICK

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1968, 1969,
1970 and 1971.

State of New York
County of Albany

JANET MACK, 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 29th day of December, 1975, she served the within Notice of Decision (~~xx Determination~~) by (certified) mail upon Harry T. Dick and Lilja H. Dick, (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Harry T. Dick
23 Delvino Road
London, SW 64AF, England 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

29th day of December, 1975.

Mary Long

Janet Mack



DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT
PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227
AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3333
~~457-3333~~
457-3850

DATED: Albany, New York
December 29, 1975

Mr. & Mrs. Harry T. Dick
23 Delvino Road
London, SW 64AP, England

Dear Mr. and Mrs. Dick:

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

Please take further notice that pursuant to
Section ~~690~~ **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,


Paul E. Coburn
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARRY T. DICK and :
LILJA H. DICK : DECISION
: :
for Redetermination of Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1968, 1969, 1970 and 1971. :

Petitioners, Harry T. Dick and Lilja H. Dick, 23 Delvino Road, London, SW 64AF, England, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969, 1970 and 1971. (File No. 3-49955042). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1975 at 1:20 P.M. Petitioner, Harry T. Dick, appeared pro se and for his wife, petitioner, Lilja H. Dick. The Income Tax Bureau appeared by Peter Crotty, Jr., Esq. (James Scott, Esq. of counsel).

ISSUE

Were petitioners, Harry T. Dick and Lilja H. Dick, resident individuals of New York State during the years 1968, 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioners, Harry T. Dick and Lilja H. Dick, filed New York State income tax resident returns for the periods from January 1, 1968 to August 31, 1968 and from October 1, 1971 to December 31, 1971. They did not file any New York State income tax returns for the period from September 1, 1968 through September 30, 1971. The aforesaid returns were not filed until 1973.

2. On October 28, 1974, the Income Tax Bureau issued statements of audit changes against petitioners, Harry T. Dick and Lilja H. Dick, imposing New York State personal income tax in the total sum of \$1,789.59 upon all of their income subject to Federal income tax during the years 1968, 1969, 1970 and 1971 upon the grounds that they were resident individuals of New York State during all of said years. It also imposed penalties in the total sum of \$694.44 for failure to timely file and pay New York State income taxes for said years. In accordance with the aforesaid statements of audit changes, it issued a Notice of Deficiency in the sum of \$2,878.70.

3. Petitioners, Harry T. Dick and Lilja H. Dick, conceded at the formal hearing that they were New York domiciliaries during the years 1968, 1969, 1970 and 1971.

4. Petitioners, Harry T. Dick and Lilja H. Dick, spent more than 30 days in New York State during the years 1968 and 1971. They spent less than 30 days in New York State during the years 1969 and 1970.

5. Petitioner, Harry T. Dick, commenced employment with IBM World Trade Corporation in 1963. He was transferred to its Paris, France

office for a minimum of three years on approximately September 1, 1968. He went to France with his family and all of his household goods. They lived in two different unfurnished rented apartments while in France. His children attended the American school in Paris. He obtained French residence and working permits. He paid French income taxes. They returned to the United States on approximately October 1, 1971.

6. Petitioners, Harry T. Dick and Lilja H. Dick, have owned a four bedroom home located at 114 Meadbrook Road, Garden City, New York from 1964 until the present time. They resided in the house from 1964 until approximately August 31, 1968 when they left for France. Petitioner, Harry T. Dick's parents occupied the premises from approximately September 1, 1968 until approximately October 1, 1971, when petitioners returned to live in the premises. Petitioner, Harry T. Dick, paid all of his mortgage and real property tax expenses in connection with the house during the period it was occupied by his parents. They paid for utilities. He did not charge them any rent for the use of the premises. During the period he was living in France he, from time to time, returned to New York State on business trips. He would occasionally stay at the house while he was in New York on these business trips. His parents brought their own household furnishings to use in the house.

CONCLUSIONS OF LAW

A. That petitioners, Harry T. Dick and Lilja H. Dick, were resident individuals of New York State during the entire years of 1968 and 1971 in accordance with the meaning and intent of section

605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) and 102.2(e), since they were domiciled in, spent more than 30 days in and maintained a permanent place of abode in New York State during said years.

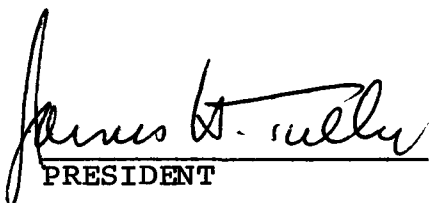
B. That petitioners, Harry T. Dick and Lilja H. Dick, were resident individuals of New York State during the entire years of 1969 and 1970 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) and 102.2(e), since they were domiciled in and maintained a permanent place of abode in New York State during said years.

C. That the constitutionality of the laws of New York State are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) and 102.2(e) are constitutional to the extent that they relate to the imposition of the additional personal income tax which is the subject of this proceeding.

D. That the petition of Harry T. Dick and Lilja H. Dick is denied and the Notice of Deficiency issued October 28, 1974, is sustained.

DATED: Albany, New York
December 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER