

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT A. & JILL J. KATZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(s) or Period(s)~~ 1968.:

State of New York
County of Albany

Bruce Batchelor, 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 18th day of January, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Albert A. & Jill J. Katz

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. & Mrs. Albert A. Katz
40 Conger 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)~~
~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

18th day of January, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 18, 1977

TELEPHONE: (518) 457-1723

Mr. & Mrs. Albert A. Katz
40 Conger Street
Bloomfield, New Jersey 07003

Dear Mr. & Mrs. Katz:

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

Please take further notice that pursuant to
Section(§) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Revisions to Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALBERT A. & JILL J. KATZ : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Year 1968. :

Petitioners, Albert A. and Jill J. Katz, residing at 40 Conger Street, Bloomfield, New Jersey 07003, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1968. (File No. 2-29867479).

A small claims hearing was held September 19, 1976, at 2:45 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. Petitioner, Albert A. Katz, appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUES

- I. Were petitioners, Albert A. and Jill J. Katz, residents of New York State in 1968 for income tax purposes?
- II. Was the penalty imposed under section 685(a) of the Tax Law properly imposed?

FINDINGS OF FACT

1. Petitioners, Albert A. and Jill J. Katz, filed a 1968 personal income tax nonresident return in which they reported \$877.69 miscellaneous income. The return was received by the Income Tax Bureau August 6, 1973. Petitioners, Albert A. and Jill J. Katz, indicated on the return that they were not residents of New York

State for the entire year of 1968 and did not include salary income in the amount of \$19,950.00 earned abroad during said year. The Income Tax Bureau held them to be residents of New York State for the entire year and, therefore, taxable on all income wherever earned. A Notice of Deficiency was issued dated April 11, 1975, in the amount of \$1,148.05 personal income tax due plus \$287.01 penalty plus \$412.64 interest for a total sum of \$1,847.70.

2. In 1967, petitioner, Albert A. Katz, lived in an apartment in New York with his wife and his dependent mother. He was offered and accepted a position as construction director of a vacation resort in St. Martin, Netherland, Antilles. On September 15, 1967, petitioners, Albert A. and Jill J. Katz, moved from New York to St. Martin. They took needed possessions and disposed of their car and other possessions. Petitioner, Albert A. Katz's mother remained in the New York apartment.

3. Petitioners, Albert A. and Jill J. Katz, entered St. Martin under United States passports and not as immigrants. They lived in temporary quarters during their stay in St. Martin. In October or November of 1968, the principals constructing the resort ran out of funds and petitioners, Albert A. and Jill J. Katz, went to Puerto Rico for new business purposes. When it became evident that a new business could not be established, they moved back to the New York apartment occupied by petitioner, Albert A. Katz's mother. In January of 1969, petitioners, Albert A. and Jill J. Katz, moved into an apartment in the State of New Jersey.

4. Petitioner, Albert A. Katz, contended that he moved to St. Martin intending never to return to the United States and, that if his plans and expectations had materialized, he would have been "set for life" owning 5% of the resort and managing the hotel. Petitioner, Albert A. Katz, did not introduce any evidence to substantiate his contentions.

CONCLUSIONS OF LAW

A. That petitioners, Albert A. and Jill J. Katz, were domiciled in New York State during the entire year of 1968 in accordance with the meaning and intent of 20 NYCRR 102.2(d).

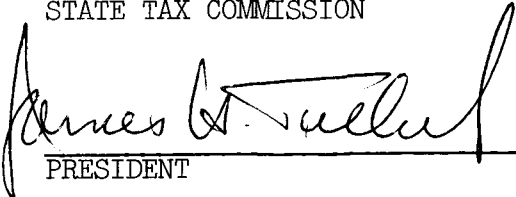
B. That since petitioners, Albert A. and Jill J. Katz, were domiciled in New York State during said year and had no permanent place of abode outside of New York State during the entire year, they were residents of New York State for tax purposes during all of said year in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

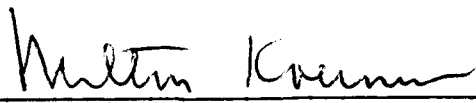
C. That the failure of petitioners, Albert A. and Jill J. Katz, to file a 1968 return on or before the prescribed date was due to reasonable cause and not willful neglect and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.


D. That the petition of Albert A. and Jill J. Katz is granted to the extent of cancelling the penalty imposed pursuant to section 685(a)(1) of the Tax Law for the year 1968 in the sum of \$287.01 and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 11, 1975, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER