

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HY KOLES

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)~~ :
1966, 1967, 1968 and 1969.

State of New York
County of Albany

Marsina Donnini, 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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Hy Koles

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Hy Koles
44 Markwood Road
Ardsley, New York 10502

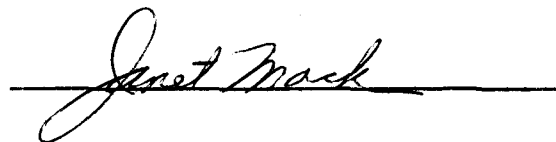
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~of the~~) 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

30th day of June, 1977.





STATE OF NEW YORK
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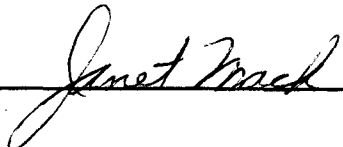
State of New York
County of Albany

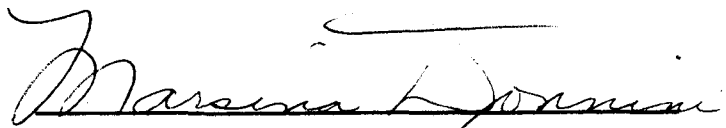
Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Benjamin Fishbein &
Howard I. Schwartz (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Benjamin Fishbein & Howard I. Schwartz, CPAs
Fishbein & Co.
Elkins Park Plaza
8033 Old York Road
Elkins Park, Pennsylvania 19117
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 the) 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

30th day of June, 1977.







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

June 30, 1977

TELEPHONE: (518) **457-1723**

Mr. Hy Koles
44 Markwood Road
Ardsley, New York 10502

Dear Mr. Koles:

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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
HY KOLES	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1966, 1967, 1968 and 1969	:	

Petitioner, Hy Koles, 44 Markwood Road, Ardsley, New York 10502, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966, 1967, 1968 and 1969. (File No. 00461)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1976, at 9:45 a.m. The petitioner appeared by Benjamin Fishbein, CPA, and Howard I. Schwartz, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the petitioner, Hy Koles, was a resident of New York State for the years 1966, 1967, 1968 and 1969.

II. Whether the petitioner had reasonable cause not to file New York State resident income tax returns for the years 1966, 1967 and 1968, and not to timely file said return for the year 1969.

FINDINGS OF FACT

1. Upon the advice of his accountant, the petitioner, Hy Koles, failed to file New York State resident income tax returns for the years 1966, 1967 and 1968, and did not file a New York State resident income tax return for 1969 until June 13, 1971.

2. On July 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Hy Koles, imposing personal income tax of \$2,432.57 and \$924.00 for the years 1966 and 1967, respectively, plus a \$608.14 penalty for 1966 with \$1,063.76 in interest and a \$231.00 penalty for 1967 with \$348.63 in interest, upon the grounds that the petitioner was a resident of New York State for these years and failed to file returns and pay the tax due. Accordingly, a Notice of Deficiency was issued totalling \$5,608.10.

3. On July 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Hy Koles, imposing personal income tax of \$4,621.02 and additional personal income tax of \$175.00 for the years 1968 and 1969, respectively, plus a \$1,155.25 penalty for 1968 with \$1,466.25 in interest, and a \$1,199.82 penalty for 1969 with \$317.36 in interest, upon the grounds that the petitioner

was a resident of New York State for these years, and failed to file returns and pay the tax due. Accordingly, a Notice of Deficiency was issued totalling \$8,934.70.

4. The petitioner entered into a separation agreement with his first wife, Helen Koles, on February 2, 1968. In this agreement it was stated that the parties had lived apart since May 15, 1965 and, further, that the petitioner was "of New York City". The agreement also stated, in Clause "5", that the petitioner could have his son visit him in New York.

5. The petitioner, Hy Koles, was listed in the directory for an apartment in a residential building at 55 West 14th Street, New York, New York from June of 1965 through all of the years in issue.

6. The petitioner, Hy Koles, offered no documentary or other substantial evidence that the apartment mentioned in Finding of Fact "5", supra, was for business, solely, and not for the personal use of the petitioner. No copy of the lease on this apartment was offered, which would evidence whether it was leased to the petitioner or one of the corporations in which he was a substantial shareholder, Inter-Continental Import-Export Co., Inc. or Divine and Koles, Inc.

7. The petitioner listed his address as 458 Wingate Road, Huntingdon, Pennsylvania, on his Federal income tax returns for the

years 1966 and 1967. These returns were filed jointly with his first wife, Helen Koles.

8. On September 29, 1968, the petitioner was married to his second wife, Ileana Koles, and has resided with her in New York State since that time.

9. The petitioner spent more than 30 days in New York State during each of the years in issue.

CONCLUSIONS OF LAW

A. That petitioner, Hy Koles, was domiciled in New York State during the years 1966, 1967, 1968 and 1969.


B. That since the petitioner, Hy Koles, during the years 1966, 1967, 1968 and 1969, was domiciled in New York State, maintained a permanent place of abode in New York State and spent more than 30 days in New York State each of these years, therefore, he was a resident individual during said years within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

C. That since the petitioner, Hy Koles, upon the advice of his accountant, failed to file New York State resident income tax returns for the years 1966, 1967 and 1968, and failed to timely file for the year 1969, he had reasonable cause for his failure. Therefore, the penalties assessed pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.


D. That the petitions of Hy Koles are granted to the extent of cancelling the penalties, as set forth in Conclusion of Law "C", supra; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued July 29, 1974; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER