

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THERESE E. MYERS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(5)~~ 22 of the :
Tax Law for the Year ~~(5)XXXXXX(5)~~ :
1972

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 26 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Therese E. Myers ~~XXXXXX(5)XXXXXX(5)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ms. Therese E. Myers
1 Quarterdeck #61
Marina Del Rey, California 90021 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 ~~XXXXXX(5)XXXXXX(5)~~ 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

26th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 26, 1977

Ms. Therese E. Myers
1 Quarterdeck #61
Marina Del Rey, California 90021

Dear Ms. Myers:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THERESE E. MYERS	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Taxes under Article 22 of the Tax Law	:	
for the Year 1972.	:	

Petitioner, Therese E. Myers, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1972.

The case was submitted for decision on information contained in the file.

ISSUES

I. The first issue is whether petitioner, Therese E. Myers, changed her domicile from New York State to the State of California, during the year 1972, and if so when such change occurred.

II. The second issue is whether petitioner is taxable as a nonresident on income earned after she moved to California.

III. The third issue is whether petitioner is entitled to a New York State tax credit with respect to the tax upon income from a Pennsylvania trust fund.

IV. The forth issue is whether petitioner is entitled to a New York State tax credit with respect to the tax upon interest income from Pennsylvania bank accounts.

FINDINGS OF FACT

1. Petitioner, Therese E. Myers, timely filed a New York State income tax resident return for the year 1972. She also incorrectly filed a New York State income tax nonresident return for the said year.

2. A Notice of Determination of deficiencies in personal income taxes for the year 1972 was issued on July 29, 1974, against the taxpayer under File No. 2-29186157.

3. The taxpayer petitioned for redetermination of the deficiencies and a refund of an excess in taxes withheld.

4. In 1972, petitioner was an assistant vice-president of First National City Bank in New York in its leasing subsidiary. In May, 1972, petitioner was transferred to another wholly owned subsidiary of Citibank called Transaction Technology, hereinafter referred to as TTI. TTI, at that time, was located in Boston, Massachusetts and Los Angeles, California. Although assigned to TTI, petitioner continued to be paid by First National City Bank, which continued to withhold New York State taxes for the entire year in question. Petitioner was first sent to Boston for the months of May and June, 1972, with the intention that in June she would be transferred to Los Angeles to run

TTI's administrative operation. Petitioner arrived in Los Angeles in July and rented an apartment in August. The pay arrangement with First National City Bank continued for the balance of 1972.

5. During the period from January 1 to July 1, 1972, petitioner earned salary income while a New York State resident, living and working in New York and Boston. After July 1, 1972, petitioner continued to earn salary income while living and working in California through December 31, 1972. During the July through December period, petitioner did not work in New York State. A sum of \$1,797.86 was withheld from petitioner's total salary income for the year 1972, by her New York based employer, for New York State tax purposes. Petitioner paid no state taxes to either Massachusetts or California during the year in question.

6. In 1972, petitioner also derived interest income from bank accounts and a trust fund held in Pennsylvania. Pennsylvania state tax was paid on this income.

CONCLUSIONS OF LAW

A. Under the Tax Law section 605(a), Reg. section 102.2(d)(2), it is determined that petitioner, Therese E. Myers, changed her domicile from New York State to the State of California on July 1, 1972, since on this date she moved to a new home in California with the bona fide intention of making her fixed and permanent place of abode there.

Therefore, petitioner is taxable as a resident of New York only on income earned from January 1 to July 1, 1972.

B. Petitioner is not taxable as a nonresident of New York on income earned while living and working in California from July 1 through December 31, 1972, since compensation for personal services rendered by a nonresident individual wholly without the state is not included in his New York adjusted gross income, regardless of the fact that payment may be made from a point within the state or that the employer is a resident corporation.

C. Petitioner is entitled to a New York State tax credit with respect to the tax upon income from a Pennsylvania trust fund, using the New York derived income from January 1 to July 1, 1972 in computation of such credit. Tax Law section 620(b)(1).

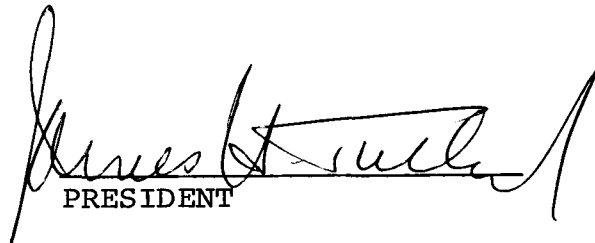
D. Petitioner is not entitled to a New York State tax credit with respect to the tax upon interest income derived from Pennsylvania bank accounts, because resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles. Tax Law section 620, Reg. section 121.3(d).

E. The refund shall be recomputed in accord with this decision.

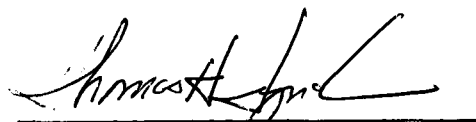
DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER