

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD and ANNEKE HYATT

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) ~~xxx xxxxx(x)~~
1972 and 1973.

State of New York
County of Albany

John Huhn, 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 17th day of April, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Gerald & Anneke Hyatt

(~~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. Gerald Hyatt
10 Oxford Road
Long Meadow, Massachusetts 01106

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

17th day of April, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD and ANNEKE HYATT

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) ~~xxxx Period(x)~~
1972 and 1973.

State of New York
County of Albany

John Huhn, 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 17th day of April, 1978, she served the within
Notice of Decision by (certified) mail upon Bernard Rudin

(representative of) the petitioner in the within proceeding,

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

Bernard Rudin, CPA
Rudin and Gissen, P.C.
420 Lexington Avenue
New York, New York 10017

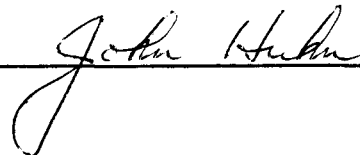
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of April, 1978







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

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

April 17, 1978

Mr. & Mrs. Gerald Hyatt
10 Oxford Road
Long Meadow, Massachusetts 01106

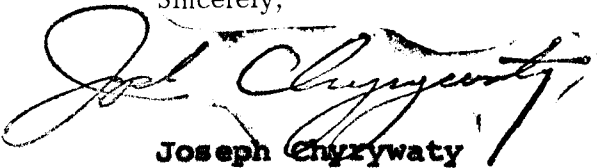
Dear Mr. & Mrs. Hyatt:

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 ~~(x)~~ **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,


Joseph Churywaty
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

GERALD and ANNEKE HYATT :

DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1972 and 1973. :

Petitioners, Gerald and Anneke Hyatt, 10 Oxford Road, Long Meadow, Massachusetts 01106, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 14295).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 24, 1977 at 9:15 A.M. The petitioners appeared by Bernard Rudin, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State for income tax purposes during 1972 and 1973.

FINDINGS OF FACT

1. Petitioners, Gerald and Anneke Hyatt, filed a New York State resident income tax return for 1972, on which they indicated that they were residents of New York State from January 1, 1972 to March 31, 1972. They also filed a New York State resident income tax return for 1973, on which they indicated that they were residents of New York State from October 15, 1973 to December 15, 1973.

2. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Gerald and Anneke Hyatt, imposing additional personal income tax on the grounds that they were residents of New York State for income tax purposes for 1972 and 1973.

3. Prior to March 31, 1972, petitioner Gerald Hyatt resided in New York State and was employed by the Singer Company. On or about April 1, 1972, he was transferred to Brazil on a permanent basis. Petitioners gave up their residence in New York State and shipped their furniture (along with other tangible personal property) to Brazil.

4. Petitioner Gerald Hyatt applied for and received a permanent Brazilian visa. The visa had no limitations as to the length of petitioner's stay in Brazil. Petitioner Anneke Hyatt is a West German citizen and had resident-alien status in the United States prior to her going to Brazil. She did not apply for readmission to the United States when she left for Brazil.

5. Petitioner Gerald Hyatt was subject to taxes in Brazil as a permanent resident. Brazilian taxes were withheld from his salary and Brazilian tax returns were filed by him. Petitioners filed joint United States Federal income tax returns for 1972 and 1973.

6. While petitioners were residing in Brazil, their oldest child was enrolled in an English speaking private school and their youngest child was enrolled in a Brazilian school.

7. During July of 1973, petitioner's employment with the Singer Company was terminated. The petitioner maintained that he traveled throughout Europe looking for employment. He further contended that after failing to secure employment outside the United States, he reluctantly returned to New York State and sublet an

apartment there. On or about December 15, 1973, petitioners moved to Massachusetts, where they purchased a home.

CONCLUSIONS OF LAW

A. That petitioners, Gerald and Anneke Hyatt, were domiciled in New York State prior to their moving to Brazil; they have not sustained the burden of proof required to show that they moved to Brazil with the intention of remaining there permanently. Therefore, they are considered to be domiciled in New York State for 1972 and 1973 within the meaning and intent of 20NYCRR 102.2(d)(3).

B. That petitioners were domiciled in New York State, maintained a permanent place of abode for a portion of each year at issue in New York State and spent more than thirty days there during each year. Therefore, they are residents of New York State for income tax purposes for 1972 and 1973, within the meaning and intent of section 605(a) of the Tax Law and 20NYCRR 102.2(b).

C. That the petition of Gerald and Anneke Hyatt is denied and the Notice of Deficiency issued January 26, 1976 in the sum of \$1,029.76 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER