

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

W. LAWRENCE and ELIZABETH C. BANKS :

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~~ ~~xxxx~~ ~~(x)~~ :
1970, 1971 and 1972.

State of New York
County of Albany

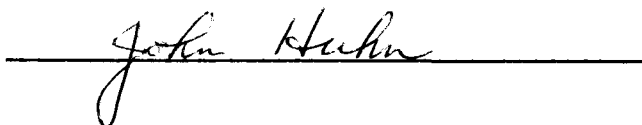
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of March , 1978, ~~she~~ served the within
Notice of Decision by ~~(xxxxxx)~~ mail upon W. Lawrence and
Elizabeth C. Banks ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. W. Lawrence Banks
13 Abercorn Place
London, N.W. 8, 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 Postal Service within the State of New York.

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

22nd day of March , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article (s) 22 of the :
Tax Law for the Year(s) ~~1970, 1971 and 1972~~ :
1970, 1971 and 1972.

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 22nd day of March , 19 78, she served the within
Notice of Decision by (certified) mail upon Arthur M. Hayes, Jr.

(representative of) the petitioner in the within proceeding,

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

as follows: Arthur M. Hayes, Jr., CPA

Ernst & Ernst

140 Broadway

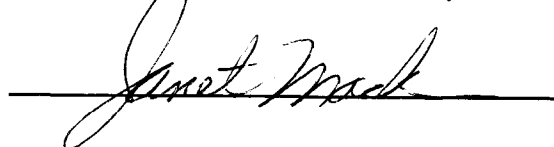
New York, New York 10005

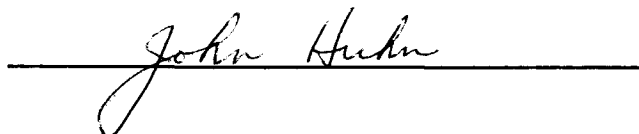
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

22nd day of March , 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

March 22, 1978

**Mr. & Mrs. W. Lawrence Banks
13 Abercorn Place
London, N.W. 8, England**

Dear Mr. & Mrs. Banks:

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,

**Aloysius J. Nendza
Assistant Director**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
W. LAWRENCE and ELIZABETH C. BANKS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970, 1971 and 1972.	:	

The petitioners, W. Lawrence Banks and Elizabeth C. Banks, 13 Abercorn Place, London, N. W. 8, England, 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 1970, 1971 and 1972 (File No. 00149).

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 August 10, 1976 at 1:15 P.M. Petitioners appeared by Ernest & Ernest, CPAs (Arthur M. Hayes, Jr. Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq., of counsel).

On September 17, 1976, Miller & Summit (Michael G. Tannenbaum, Esq., of counsel) advised the Hearing Officer that they had been retained as counsel for the petitioners. A request had been made

at the hearing for time to submit additional evidentiary matter and a memorandum of law with respect to the issues in the case. On October 22, 1976 a memorandum of law, with evidentiary exhibits attached, was submitted by counsel for the petitioners together with an application for a formal rehearing on the petition. That application was denied by the State Tax Commission and the case was submitted to the Hearing Officer for preparation of a proposed decision.

Due consideration has been given all the information in the entire file.

ISSUE

Whether the apartment maintained in New York State by a British domiciliary during his five year stay in New York constituted a permanent place of abode so as to make the petitioner a New York State resident within the meaning of section 605(a)(2) of the Tax Law when he admittedly spent more than 183 days in the State during each of the tax years in issue.

FINDINGS OF FACT

1. On May 20, 1974 the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes imposing additional New York State personal income taxes for the years 1970, 1971 and 1972 upon the petitioners, W. Lawrence Banks and his wife,

Elizabeth C. Banks. The deficiency assessed was \$21,865.42 plus interest of \$2,414.19 for a total allegedly due of \$24,279.61. An explanatory attachment indicated that the information submitted by petitioners, W. Lawrence Banks and his wife, Elizabeth C. Banks, had not established that they were in the United States for a temporary period to accomplish a specific purpose. The notice also pointed out that for the tax year beginning January 1, 1972, long term capital gains were taxable at 60% rather than 50% reportable to the Internal Revenue Service. Therefore, 20% of the long term capital gain reported on petitioners' Federal income tax return must be added at Line 2, Page 1 of the 1972 New York State return.

2. Petitioners, W. Lawrence Banks and his wife Elizabeth C. Banks, had timely filed joint New York State nonresident income tax returns for each of the years 1970, 1971 and 1972. They had paid the tax shown to be due on the income tax returns.

3. During April of 1968 the petitioner W. Lawrence Banks was transferred by his British corporate employer, Robert Fleming and Company Limited, to New York for a period of time not to exceed five years to form its wholly-owned American subsidiary, Robert Fleming Incorporated. The initial term was for three years.

4. The transfer of petitioner W. Lawrence Banks was for the specific purpose of establishing an investment banking presence in New York State. Copies of minutes of prior meetings of the Board of Directors, and correspondence with the Ministry of Social Security support the written statement of the United Kingdom employer that petitioner W. Lawrence Banks was transferred to New York for a limited period of time.

5. Photostatic copies of relevant portions of the passport of petitioner W. Lawrence Banks indicate that he entered the United States on a Non-Immigrant E-1 visa in April, 1968. The visa was renewed with the same non-immigrant status in August, 1971.

6. Petitioner W. Lawrence Banks submitted a reply to a "Questionnaire - Allocation of Personal Service Compensation" supplementary to his New York State income tax return for the year 1972 which detailed days worked out of state and not at home. It indicated that petitioner had worked 65 of his total of 223 working days outside New York State. Petitioner W. Lawrence Banks had engaged in business meetings and negotiations in Washington, D.C., Philadelphia, Pennsylvania, Chicago, Illinois, Minneapolis, Minnesota, Dallas, Texas, Houston, Texas, Huntsville, Alabama, Denver, Colorado and London, England as well as other places.

This computation and allocation was accurately reflected in Schedule A-1 of the 1972 New York State nonresident income tax return. Allocations for 1970 and 1971 were similarly shown.

7. While in New York, petitioner W. Lawrence Banks leased an apartment and it was furnished both with his own and with furniture owned and supplied by the New York corporation organized by W. Lawrence Banks. That corporation, Robert Fleming, Incorporated, 100 Wall Street, New York, New York, was and is a wholly-owned subsidiary of Robert Fleming and Company Limited of London, England.

8. In each of the tax years 1970, 1971 and 1972, petitioners, W. Lawrence Banks and Elizabeth C. Banks, spent more than 183 days in New York State. In 1973, petitioners returned to live in England.

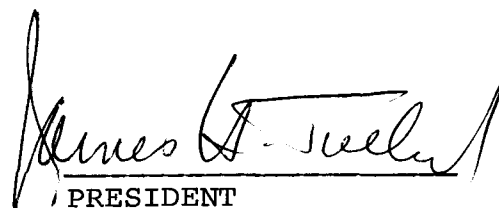
CONCLUSIONS OF LAW

A. That the petitioners, W. Lawrence Banks and Elizabeth C. Banks, were domiciliaries of Great Britain who came to New York State for a temporary and definite stay to accomplish a particular purpose. That during the five years of their stay in New York, petitioners did not maintain a permanent place of abode in this state and were therefore nonresidents within the meaning and intent of section 605(a)(2) of the Tax Law and 20 NYCRR 102.2(e).

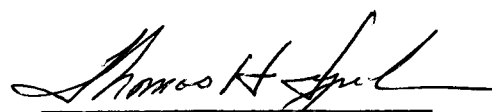
B. That the petition of W. Lawrence Banks and Elizabeth C. Banks is granted and the Notice of Deficiency issued May 20, 1974 is cancelled.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER