

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE T. and BONNIE B. ZINN

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 (~~six~~ ~~Periods~~) 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

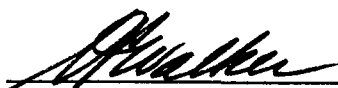
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1978, she served the within
Notice of Decision by (certified) mail upon George T. and Bonnie B.
Zinn (~~representative of~~) the petitioner in the within proceeding,

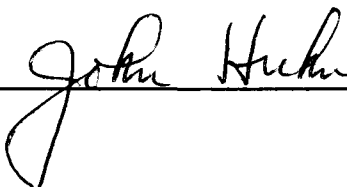
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. George T. Zinn
3303 Pachappa Drive
Riverside, California 92506

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
13th day of December, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE T. and BONNIE B. ZINN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(2)~~ 22 of the
Tax Law for the Year ~~(s) or Period(s)~~ 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 13th day of December, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Leo J. Giroir, Jr.

(representative of) the petitioner in the within proceeding,

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

as follows: Leo J. Giroir, Jr., CPA
Ross, Landis & Pauw
3845 Market Street
Riverside, California 92501

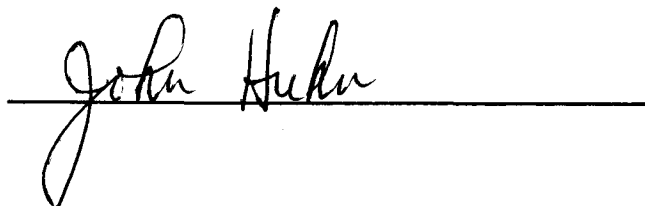
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December, 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

December 13, 1978

**Mr. & Mrs. George T. Zinn
3303 Pachappa Drive
Riverside, California 92506**

Dear Mr. & Mrs. Zinn:

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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GEORGE T. and BONNIE B. ZINN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

DECISION

Petitioners, George T. and Bonnie B. Zinn, 3303 Pachappa Drive, Riverside, California 92506, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 12502).

On November 5, 1976, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether petitioners were New York State residents for 1973 and subject to New York State income tax.

II. Whether petitioners were able to substantiate the amounts reported on their 1973 New York State income tax returns as deductions for home office expense, sales tax and other itemized deductions.

FINDINGS OF FACT

1. On December 4, 1974, the Income Tax Bureau issued a Statement of Audit Changes for 1973 to petitioners. This was done on the grounds that petitioner George T. Zinn was a resident of New York State for the entire year and that petitioner Bonnie B. Zinn was a resident for the last three months of 1973. Since it was held that each had a different period of residence in New York, the tax was computed as though separate returns had been filed.

2. Petitioner George T. Zinn's income for the year was determined to be \$21,145.00 and his itemized deductions were adjusted by the following:

- a) elimination of itemized deductions in the amount of \$596.00 as deductions attributable to Bonnie B. Zinn;
- b) disallowance of a sales tax deduction of \$341.00 for sales tax paid on home improvements;
- c) disallowance of a deduction of \$245.00 claimed for office-in-home expense; and
- d) increase of the subtraction modification for state and local income tax (pursuant to section 615(c)(1) of the Tax Law) from \$1,053.00 to \$1,515.00.

The above adjustments resulted in an itemized deduction of \$2,101.00 which was allowed, together with one exemption, in computing George T. Zinn's taxable income.

3. Petitioner Bonnie B. Zinn's income for the period she was considered a resident was determined to be \$2,887.50. Her taxable income was computed by allowing itemized deductions for the period in the amount of \$149.00 and one exemption (prorated pursuant to 20 NYCRR 148.20). No computation was made for the period petitioner Bonnie B. Zinn was a nonresident, as she had no New York income or items of tax preference in said period.

4. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, based on the aforementioned Statement of Audit Changes. The Notice asserted additional personal income tax of \$558.60, plus interest of \$45.80.

5. Petitioners contended that they were residents of states other than New York for 1973, never intended to change their residence and maintained all the usual indicia of residency (such as auto and voter registration, and driver's licenses) in other states during said year. They contended that petitioner Bonnie B. Zinn did not move to New York until January of 1974.

6. Petitioners contended that the Internal Revenue Service allowed a deduction for sales tax paid on the purchase of material used in the construction of home improvements.

7. Petitioner George T. Zinn also contended the home office expenses were incurred in the furtherance of his employment and, while not required by his employer, such expenses were necessary for the adequate performance of his employment duties.

8. Petitioners presented no documentary or other substantial evidence to support any of their allegations.

CONCLUSIONS OF LAW

A. That petitioner George T. Zinn was a resident of New York State for 1973, within the meaning of section 605(a) of the Tax Law; therefore, his income is subject to New York State personal income tax for that year.

B. That the domicile of a wife is presumed to follow that of her husband (20 NYCRR 102.2(5)); therefore, Bonnie B. Zinn was a resident of New York State, within the meaning of section 605(a) of the Tax Law, for the last quarter of 1973; therefore, her income during that period was subject to New York State personal income tax.

C. That petitioners failed to sustain the burden of proof required to show that the office in their home was an ordinary and necessary business expense, namely, that petitioner George T. Zinn was required by his employer to do the work which he did in his home and that he could not have done the work as well in his

employer's office (O'Connel v. Commissioner, 31 TCM 837 (1972)); therefore, the deduction for home office expense is disallowed.

D. That petitioners failed to sustain the burden of proof (pursuant to section 689(e) of the Tax Law) required to show that they paid sales tax on building materials which they purchased; therefore, the deduction for sales tax paid is disallowed.

E. That the petition of George T. and Bonnie B. Zinn is denied and the Notice of Deficiency issued May 19, 1975 is sustained.

DATED: Albany, New York
December 13, 1978

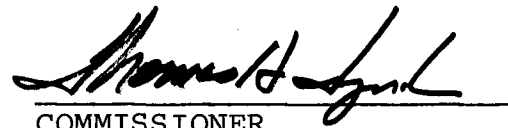
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

Tax Appeals Bureau

REQUEST FOR BETTER ADDRESS

Requested by <i>MARY GROFF</i>	
Unit <i>TAX APPEALS</i>	BUREAU BLDG. 9 Room 107
Date of Request	<i>12/28/79</i>

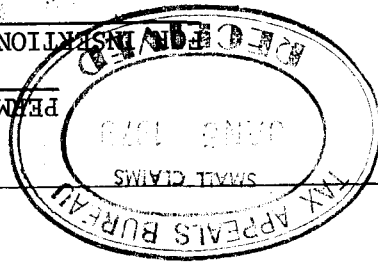
Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>559-48-1711</i> <i>450-84-2530</i>	Date of Petition <i>75/08/19</i>
Name <i>GEORGE T. & BONNIE B. ZINN</i>	Address <i>3303 Pachappa Drive Riverside, CALIFORNIA 92506</i>

Results of search by files

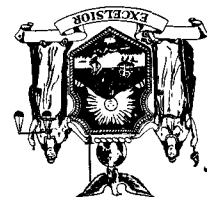
<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	<i>0716 0762 0754</i>

Searched by <i>M. J. ...</i>	Section <i>M.F.</i>	Date of Search <i>11/3/79</i> <i>1-4-79</i>
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PERMANENT RECORD

RECORDS SECTION IN TAXPAYER'S FOLDER



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

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

December 13, 1978

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3303 Pachappa Drive
Riverside, California 92506

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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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

SMALL CLAIM

TA-26 (4-76) 25M

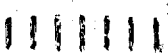
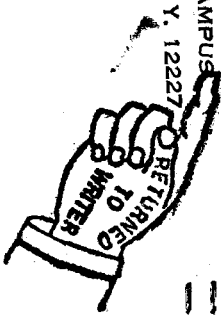
STATE OF NEW YORK

Department of Taxation and Finance

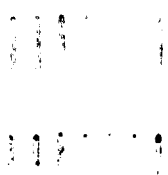
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. & Mrs. ~~George T. Zimm~~ ^{George T. Zimm}
3303 Pacifica Drive
Riverside, California 92506



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE T. and BONNIE B. ZINN

DECISION

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for Refund of Personal Income Tax under
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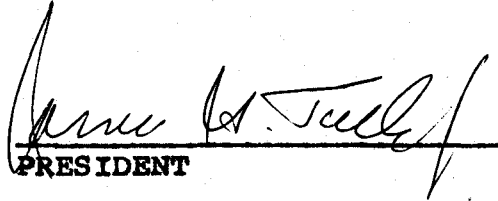
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E. That the petition of George T. and Bonnie B. Zinn is denied and the Notice of Deficiency issued May 19, 1975 is sustained.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER