

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William & Ja Hyun Haboush :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1970. :

State of New York

County of Albany

Jay Vredenburg, 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 31st day of August, 1979, he served the within notice of Decision by certified mail upon William & Ja Hyun Haboush, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Ja Hyun Haboush

440 Riverside Dr.

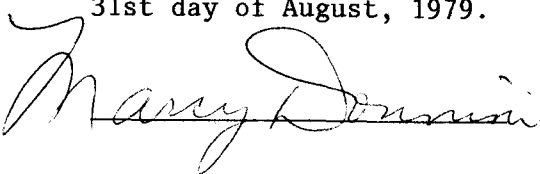
New York, NY 10027

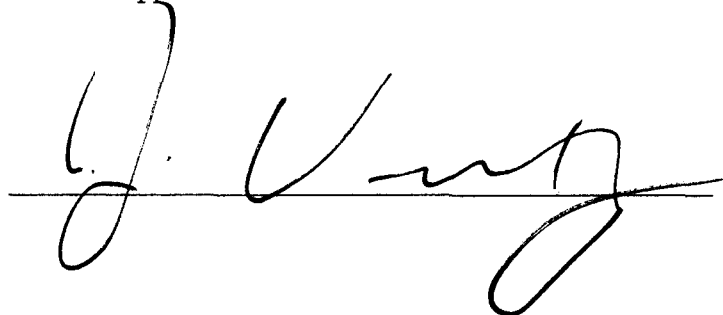
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

31st day of August, 1979.


Mary Dennis


Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

William & Ja Hyun Haboush
440 Riverside Dr.
New York, NY 10027

Dear Mr. & Mrs. Haboush:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM HABOUSH and JA HYUN HABOUSH : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970. :

Petitioners, William Haboush and Ja Hyun Haboush, 440 Riverside Drive, New York, New York 10027, 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 1970 (File No. 13692).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1978 at 1:15 P.M. Petitioner William Haboush appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

- I. Whether petitioners were residents of New York State during 1970.
- II. Whether petitioners properly deducted a loss on rental property during 1970.

FINDINGS OF FACT

1. Petitioners, William Haboush and Ja Hyun Haboush, timely filed a New York State personal income tax return for 1970, on which they subtracted wages earned while working in another state from total New York income. They also claimed a loss on rental property.

2. The Income Tax Bureau contended that petitioners were residents of New York State during 1970 for personal income tax purposes and that all income received, wherever earned, was taxable. On December 28, 1973, it issued a Notice of Deficiency against petitioners for \$283.88 in personal income tax, plus \$46.03 in interest, for a total of \$329.91. The issue of the rental loss was raised at the hearing by the Income Tax Bureau, since petitioners made reference to said loss in their petition.

3. Petitioners were domiciliaries of New York State. In 1968 petitioner William Haboush accepted employment as a teacher at the University of Michigan under a two-year contract, without tenure. Petitioners moved to Ann Arbor, Michigan, in August of 1968. After the two-year employment contract expired and no other employment was offered, petitioners returned to New York in July of 1970.

4. Petitioners did not vote in Michigan, nor did they submit evidence to show that they had taken steps to establish a permanent place of abode in said state. Their stated intention was to stay in Michigan if the employment situation was favorable and that if not, they would go elsewhere.

5. Petitioners purchased a home in New York in December of 1970. No part of the home was rented in 1970, nor was it offered for rent during said year. Petitioners stated that they claimed the rental loss as a deduction at the request of their accountant.

6. Petitioner William Haboush submitted a copy of his 1970 Michigan wage and tax statement which showed that \$169.59 in Michigan State tax was withheld from the wages which he earned there.

CONCLUSIONS OF LAW

A. That petitioners, William Haboush and Ja Hyun Haboush, were domiciliaries of New York State during 1970, having at no time effected a change of domicile to the State of Michigan.

B. That petitioners spent more than 30 days in New York during 1970, did not maintain a permanent place of abode outside New York State for the entire year and had a permanent place of abode in New York State during said year; therefore, they were resident individuals, in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That petitioners did not properly deduct a rental loss, since the property was not held for the production or collection of income during 1970, in accordance with the meaning and intent of section 62 of the Internal Revenue Code.

D. That the computation of petitioners' New York State tax for 1970, including all income, disallowing the rental loss and determining the correct resident credit allowable for taxes payable to Michigan, results in additional personal income tax due New York State of \$170.39.

E. That the petition of William Haboush and Ja Hyun Haboush is granted to the extent that the tax shown due on the Notice of Deficiency is reduced from \$283.88 to \$170.39, plus interest that may be lawfully owing. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued December 28, 1973 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER