

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walter Kappel :

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

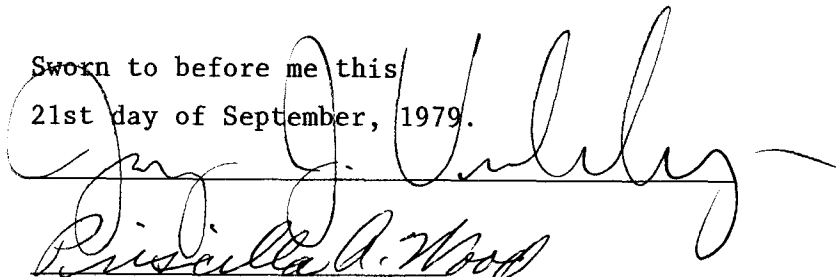

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by certified mail upon William Kessler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. William Kessler
William Kessler & Seymour L. Baldash
19 West 44th St.
New York, NY 10036

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
21st day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walter Kappel :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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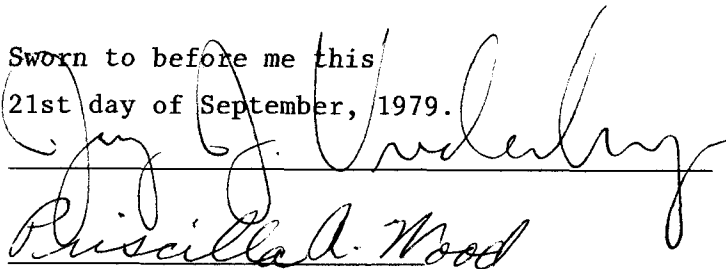
State of New York
County of Albany

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 21st day of September, 1979, he served the within notice of Decision by certified mail upon Walter Kappel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter Kappel
Beligielei 45,
B2000 Antwerp, Belgium
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
21st day of September, 1979.


Priscilla A. Wood

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Walter Kappel
Beligielei 45,
B2000 Antwerp, Belgium

Dear Mr. Kappel:

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,



cc: Petitioner's Representative
William Kessler
William Kessler & Seymour L. Baldash
19 West 44th St.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WALTER KAPPEL : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1970. :

Petitioner, Walter Kappel, Beligielei 45, B 2000, Antwerp, Belgium,
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. 13245).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing
Officer, at the offices of the State Tax Commission, Two World Trade Center,
New York, New York, on June 21, 1977 at 9:15 A.M. Petitioner appeared by
William Kessler, Esq. and Seymour L. Baldash, Esq. The Income Tax Bureau
appeared by Peter Crotty, Esq. (Irving Atkins, Esq. and Francis Cosgrove, Esq.,
of counsel).

ISSUE

Whether petitioner, Walter Kappel, was a resident individual of New York
State for income tax purposes for the taxable year 1970.

FINDINGS OF FACT

1. Petitioner, Walter Kappel, timely filed a 1970 nonresident New York
State personal income tax return reporting a negative total New York income
which resulted in no tax due shown on the return.

2. On November 10, 1972 the Income Tax Bureau issued a Statement of Audit changes to petitioner contending that he was a domiciled resident of New York who maintained a permanent place of abode in the State and, therefore, was taxable upon the same adjusted gross income as reported on his 1970 Federal income tax return. The Statement of Audit Changes also proposed to compute a minimum income tax in accordance with section 601(a) of the Tax Law and a modification for allocable expenses under section 615(c)(4) of the Tax Law. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on January 27, 1975 to petitioner, Walter Kappel, asserting additional tax due of \$12,182.70 and interest due of \$2,765.10, for a total due of \$14,947.80.

3. Petitioner, Walter Kappel, was born in Belgium on December 8, 1901, the son of German parents. Petitioner remained in Belgium until 1919 when he moved to Holland. In 1920, after one year in Holland, petitioner returned to Belgium census as a Belgian domiciliary. Petitioner attempted to obtain Belgian citizenship, however, he was refused and in 1927 became a Dutch citizen while still residing in Belgium.

4. Together with his two brothers, petitioner, conducted a dry goods business in Antwerp Belgium from 1920 to 1925 at which time one of petitioner's brothers retained the manufacturing business, another brother the wholesale business while petitioner retained the retail business. Petitioner later organized his business into a corporation entitled Bonneterie Norma Corporation (hereinafter "Norma Corp."). The business consisting of 63 retail stores, was abandoned by petitioner in 1940 when he fled from the Nazi invasion of Belgium.

5. Petitioner arrived in the United States with his wife, son and mother-in-law on January 14, 1941. After brief stays in New York City and the Adirondacks petitioner took up residence in Pelham, New York. Once in Pelham petitioner first rented a furnished apartment from 1941 to 1944, at which time he purchased a home at 137 Seventh Avenue, Pelham, New York.

6. Petitioner entered into a retail business in Mount Vernon, New York in 1941. In 1950 petitioner entered into a second retail business venture also in Mount Vernon, New York. Petitioner's interest in both businesses were liquidated in 1958 and since this date, petitioner, has had no business interests anywhere in the United States or New York State.

7. In 1945, at the conclusion of World War II, petitioner immediately returned to Belgium in an effort to recover the retail store business which he had abandoned in 1940. He recovered 32 of 63 stores. Petitioner divided his time between the Belgium retail stores and his two New York State business ventures, however, he preferred to let his partners operate the New York businesses.

8. Petitioner separated in fact from his wife in 1959. Mrs. Kappel had resided at the Pelham, New York home continuously from 1944 to the present. Title to the home is in petitioner's name petitioner never stayed overnight at the house in Pelham, New York. His visits to his wife in Pelham, New York, from 1959 to present have been rare and infrequent.

9. Petitioner has spent a great deal of his time from 1945 to the present residing in Belgium. During this period petitioner owned, maintained and resided in a house in Antwerp, Belgium, worth approximately \$300,000.00. This home was acquired by inheritance upon the death of his brothers in World War II.

10. Since 1959, petitioner has paid only brief personal visits to the United States, spending only a small percentage of his time within New York State.

11. In 1970 petitioner spent 47 days in the United States, less than 30 of them in New York State.

12. Petitioner paid taxes to the Belgian government in 1970 as a Belgian domiciliary and received the appropriate deduction for those taxes on his United States Federal income tax in 1970.

13. Petitioner became a United States citizen in 1947 and remains one to this day. Petitioner was reinstated in the Belgian census in 1961 as a Belgian domiciliary, a designation he still retains.

14. Petitioner's 1970 Federal income tax return shows a Belgian address. Petitioner's 1968 and 1969 returns show the New York address of petitioner's wife. Petitioner resided in Belgium during 1968, 1969 and 1970.

15. In 1970 while residing in Antwerp, petitioner sold his interests in Norma Corp. and continued to reside in retirement at his home in Belgium.

CONCLUSIONS OF LAW

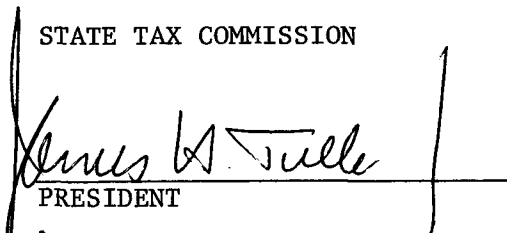
A. That petitioner, Walter Kappel, was not a domiciliary of New York State in 1970 and did not spend in excess of 183 days in New York State and, therefore, is not taxable as a resident of this State in accordance with the meaning and intent of section 605 of the Tax Law.

B. That the petition of Walter Kappel is granted and the Notice of Deficiency dated January 27, 1975 is cancelled.

DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER