

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John J. & Rosemary D. Kenney :
c/o Cia Meridional DeMineracao : 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 1972. :

State of New York
County of Albany

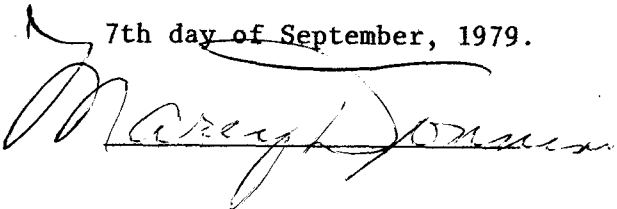
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Decision by certified mail upon John J. & Rosemary D. Kenney, c/o Cia Meridional DeMineracao, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

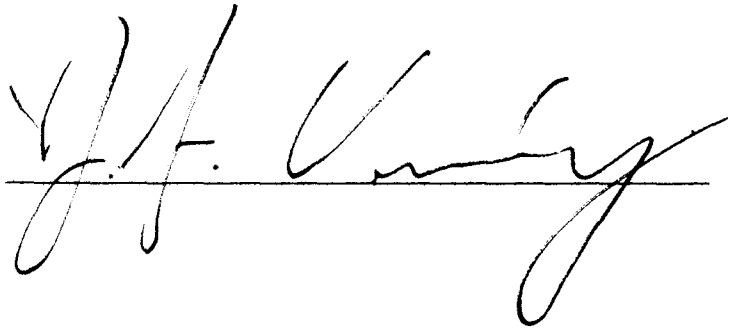
John J. & Rosemary D. Kenney
c/o Cia Meridional DeMineracao
Caixa Postal 2857-ZC-00
Rio DeJaneiro, Brazil

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
7th day of September, 1979.


Mary J. [unclear]


J. F. [unclear]

STATE OF NEW YORK
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In the Matter of the Petition :
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John J. & Rosemary D. Kenney :
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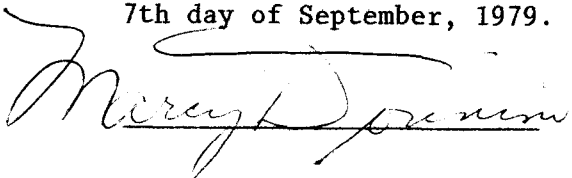
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Decision by certified mail upon Debra M. Aaron the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

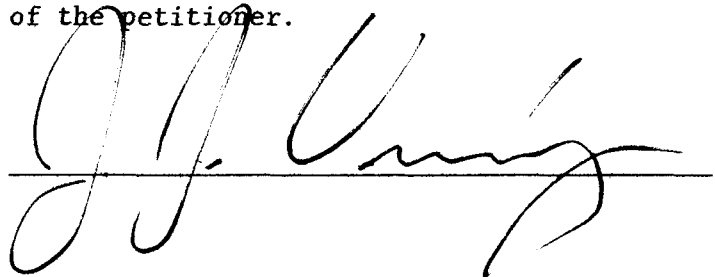
Ms. Debra M. Aaron
Kelley, Drye & Warren
350 Park Ave.
New York, NY 10022

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
7th day of September, 1979.


Notary Public


Jay Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

John J. & Rosemary D. Kenney
c/o Cia Meridional DeMineracao
Caixa Postal 2857-ZC-00
Rio DeJaneiro, Brazil

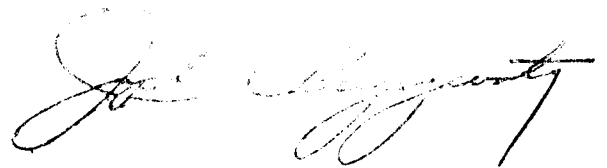
Dear Mr. & Mrs. Kenney:

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
Debra M. Aaron
Kelley, Drye & Warren
350 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

2. The Income Tax Bureau held that petitioners were domiciliaries of New York State for all of 1972; therefore, they were taxable on all income earned during said year. Other adjustments made to petitioners' tax return pursuant to sections 612(b) (11) and 615(c) (4) of the Tax Law are not at issue. A Notice of Deficiency was issued on January 26, 1976 for \$1,213.65 in personal income tax, plus \$253.36 in interest, for a total of \$1,467.01.

3. Petitioner John J. Kenney first went to Brazil in 1942 as an officer in the United States Navy, to train Brazilian naval personnel. He remained in Brazil until 1945, becoming fluent in Portuguese and Spanish and developing an abiding interest in that country. Mr. Kenney then returned to the United States and obtained permanent employment with the United States Steel Corporation, which marketed its products throughout South America. He made his interest in Brazil known to his superiors at United States Steel and was assigned duties which required frequent trips to Brazil and elsewhere in South America.

In March of 1956, Mr. Kenney was assigned to a post in Brazil where he remained until September of 1957. During this period, one of his two sons, Edward, was born in Brazil and became a Brazilian citizen, which he still is.

Petitioner John J. Kenney and his family returned to the United States in September of 1957, working at a new position with United States Steel; however, he continued to travel to South America. In 1963 United States Steel assigned Mr. Kenney to a post in New York State, where he lived with his wife and children until August of 1972.

In 1972 the position of general manager for a Brazilian corporation which was controlled by United States Steel became available; in accordance with his request, Mr. Kenney was appointed to the position of general manager.

4. Before leaving for Brazil in 1972, petitioners and their family secured permanent visas. To obtain permanent visas, it took considerable time, effort and documentation beyond that which would have been necessary to procure temporary or restricted visas. This was done because of petitioners' intention to become permanent residents of Brazil.

5. During petitioner John J. Kenney's residence in New York, he held memberships in the "Downtown Athletic Club, the American Iron and Steel Institute, the American Legion and the Wall Street Post." He resigned from all of these memberships when he departed from the United States in 1972.

6. On August 10, 1972, petitioners sold their home in New York State and moved all of their possessions to Brazil. Petitioners have not maintained a residence, apartment or any other place of abode in New York State since then.

7. Due to the shortage of mortgage money at reasonable terms and rates, petitioners did not purchase a home in Brazil; instead, they leased a home. They purchased Brazilian-manufactured durable goods such as an automobile, furniture, air conditioner and major kitchen appliances.

8. Petitioners' children attended Brazilian schools. Petitioner John J. Kenney is a member of a country club in Brazil, the Brazilian Iron and Steel Institute and the Latin American Iron Institute. He also serves as a member of the Board of Directors of a private school in Brazil, which is an office he has held since November of 1973. Petitioner Rosemary D. Kenney is a member of various Brazilian charitable organizations. Both petitioners hold Brazilian driver's licenses.

9. Since entering Brazil in August of 1972, petitioners have become subject to and paid the same social security tax and income tax as citizens of Brazil pay.

10. On August 1, 1978, petitioners renewed the lease on their home for another two years. They would have preferred a longer lease, but could not secure one.

CONCLUSIONS OF LAW

A. That petitioners acquired a foreign domicile in Brazil. The acts of petitioners as of August 10, 1972, when they took up residence in their rented home in Brazil, confirmed their stated intention to make that residence their domicile. They completely abandoned their New York domicile. They sold their home, moved to Brazil, terminated all New York affiliations, leased a home in Brazil and purchased an automobile, furniture and major kitchen appliances. John J. Kenney has employment which he expects to continue indefinitely. Petitioners are registered and pay taxes in Brazil as permanent residents. It has clearly been shown that petitioners changed their domicile in 1972 from New York to Brazil. (Matter of Franklin L. and Elizabeth A. Gurley, State Tax Commission, February 13, 1974.)

B. That the Income Tax Bureau is directed to recompute the Notice of Deficiency issued on January 26, 1976, allowing the income and deductions as shown on petitioners' returns, with the exception of the modifications pursuant to sections 612(b)(11) and 615(c)(4) of the Tax Law and the computation of New York State minimum income tax, in accordance with section 601-A of the Tax Law.

C. That the petition of John J. Kenney and Rosemary D. Kenney is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, is in all other respects denied.

DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER