

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
ROY E. KESTER and PATRICIA KESTER  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Year  
1973.

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DECISION

Petitioners, Roy E. and Patricia Kester, 2308 Plum Street, Schenectady, New York 12309, 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. 12164).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 29, 1978 at 9:00 A.M. Petitioners appeared by Dennis M. Englert, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner Roy E. Kester was domiciled in New York State for 1973 and if so, whether he was taxable as a resident of New York State for said year.

II. Whether petitioner Roy E. Kester is entitled to a credit against New York State personal income tax for 1973, for income tax paid to the Commonwealth of Pennsylvania.

FINDINGS OF FACT

1. Petitioners, Roy E. and Patricia Kester, timely filed a New York State Income Tax Resident Return for 1973. The address shown on the return

was 2308 Plum Street, Schenectady, New York. On said return, a subtraction of \$20,867.20 was taken relating to income earned by petitioner Roy E. Kester while working in Pennsylvania in 1973.

2. On February 13, 1975, the Income Tax Bureau issued a Statement of Audit Changes stating that petitioner Roy E. Kester was considered a New York State resident for all of 1973, and that all income earned during 1973 was taxable to New York State. Accordingly, on August 25, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, imposing personal income tax of \$1,075.29, plus interest of \$109.47, for a total of \$1,184.76.

3. Petitioner Roy E. Kester was employed by the United States Department of the Interior. In July of 1972, the Department of the Interior closed their office in Schenectady and petitioner was transferred and permanently assigned to the Pittsburgh, Pennsylvania, office.

4. Petitioners maintained a home in Schenectady, New York, during the year in question, where petitioner Patricia Kester and their children lived. Petitioner Roy E. Kester rented a room in a private home in Pennsylvania, where he had his personal belongings.

5. Petitioner Roy E. Kester joined business and social clubs and organizations while living in Pittsburgh and maintained a checking account there.

6. Petitioner Roy E. Kester testified that in 1973 he spent no more than sixty days in New York State for the purpose of visiting his family. Many times his Schenectady home would be a stopover, since his job required him to travel throughout the Northeast. Petitioner also spent time in Schenectady when he was on vacation.

7. Petitioner Roy E. Kester maintained his New York driver's license and his car was registered in New York, since the car was mainly used in New York by his son. Petitioner Roy E. Kester was registered to vote in New York, but

did not choose to do so in 1973.

8. Petitioner Roy E. Kester filed a Commonwealth of Pennsylvania income tax return for 1973 and paid income taxes of \$481.44.

9. Petitioner returned to his Schenectady home in December of 1975, when he was permanently assigned to a new office in Albany, New York.

CONCLUSIONS OF LAW

A. That petitioner Roy E. Kester was a domiciliary of New York State during 1973. Petitioners maintained a permanent place of abode in New York and spent more than thirty days in New York during said year; therefore, they were residents of New York State for income tax purposes, within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

B. That petitioners are entitled to a resident tax credit in accordance with section 620 of the Tax Law. The Income Tax Bureau is directed to modify the Notice of Deficiency issued on August 25, 1975, by the amount of said allowable resident tax credit.

C. That the petition of Roy E. and Patricia Kester is granted to the extent indicated in Conclusion of Law "B", and that, except as so granted, the petition is in all other respects denied.

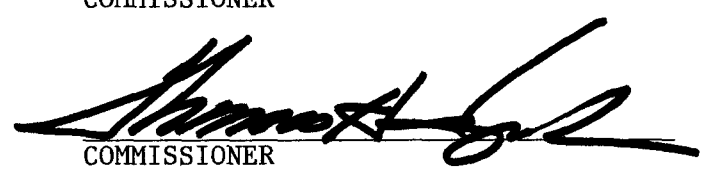
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

October 9, 1979

Roy E. & Patricia Kester  
2308 Plum St.  
Schenectady, NY

Dear Mr. & Mrs. Kester:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Dennis M. Englert  
Englert & Reilly, Esqs.  
144 Barrett St.  
Schenectady, NY 12305  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Roy E. & Patricia Kester :

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 1973. :

State of New York

County of Albany

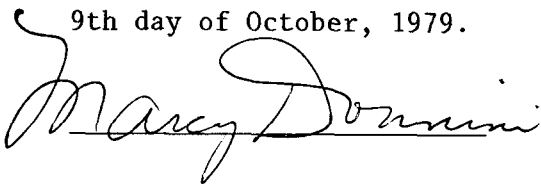
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Roy E. & Patricia Kester, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

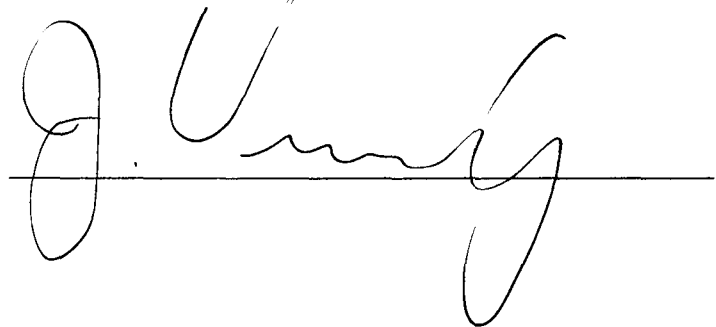
Roy E. & Patricia Kester  
2308 Plum St.  
Schenectady, NY

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  
9th day of October, 1979.

  
Nancy Dominini

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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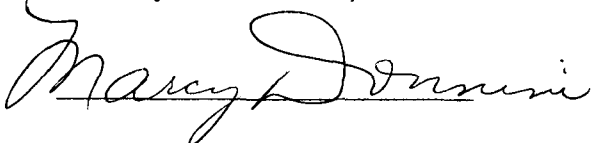
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Dennis M. Englert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

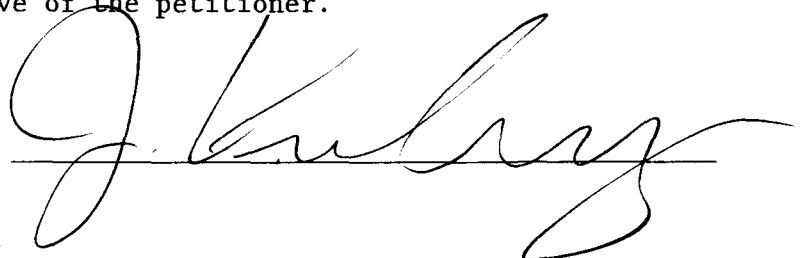
Mr. Dennis M. Englert  
Englert & Reilly, Esqs.  
144 Barrett St.  
Schenectady, NY 12305

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  
9th day of October, 1979.

  
Nancy D. Dorman

  
Jay Vredenburg