

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

FREDERICK P. and MURIEL K. WALSTOW  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article  22 of the  
Tax Law for the Year ~~(xxxxxx)~~  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 15th day of March, 1979, she served the within  
Notice of Decision by ~~(certified)~~ mail upon Frederick P. and  
Muriel K. Walstow ~~(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. Frederick P. Walstow  
c/o Caltex Oil Sae.  
Arapiles 13  
Madrid 15, Spain  
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)~~  
~~(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

15th day of March, 1979

Maurice J. Papareau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK P. and MURIEL K. WALSTOW

AFFIDAVIT OF MAILING

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 (x) ~~1972~~ <sup>Period(s)</sup> 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 15th day of March , 19 79, she served the within  
Notice of Decision by (certified) mail upon Howard O. LeShaw  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Howard O. LeShaw, CPA  
35 West 53rd Street  
New York, New York 10019

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

15th day of March , 19 79

Marilyn J. Papineau

John Huhn



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

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

March 15, 1979

Mr. & Mrs. Frederick P. Walstow  
c/o Caltex Oil Sae.  
Arapiles 13  
Madrid 15, Spain

Dear Mr. & Mrs. Walstow:

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,

  
**MICHAEL ALEXANDER**  
**SUPERVISING TAX HEARING OFFICER**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FREDERICK P. and MURIEL K. WALSTOW : DECISION  
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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Petitioners, Frederick P. and Muriel K. Walstow, c/o Caltex Oil Sae., Arapiles 13, Madrid 15, Spain, 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.

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 13, 1977 at 9:15 A.M. Petitioners appeared by Howard O. LeShaw, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioners are liable for New York State taxes as resident individuals for the 1973 tax year.

FINDINGS OF FACT

1. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioners, Frederick P. and Muriel K. Walstow, indicating a deficiency of \$3,723.74, plus interest, for the 1973 tax

year. This amount was reduced by \$559.00, said sum being designated by the Bureau as "over-payment on return." On the same date, the Bureau issued a Statement of Audit Changes reading, in pertinent part, as follows:

"Removal from New York State for a temporary and limited period of employment does not constitute a permanent change of residence and the person retains the status he had before such employment. Employees who, in the performance of their duties, have received orders to proceed to stations of duty outside the United States, do not lose their status as New York residents because such assignments are presumably temporary, even though they may conceivably be of relatively long duration."

2. Mr. Walstow and his wife were born in the United Kingdom and lived there until 1937 and 1940, respectively. They then both lived in the State of Bahrain on the Arabian Gulf until 1957.

3. Mr. Walstow was employed by Caltex Petroleum Corporation and various of its subsidiaries during the period petitioners were in Bahrain and until 1977.

4. In 1957 Mr. Walstow was transferred to the United States by Caltex on a two-year training assignment. During their first year in the United States, petitioners lived in a rented, furnished house in Eastchester, New York.

5. In 1958 Mr. Walstow's training assignment was terminated. He obtained an immigrant visa from the United States Immigration Department with the aim, ultimately, of becoming a naturalized United States citizen.

6. Petitioners purchased a house in New City, Rockland County, New York, in 1958 and lived there until 1960. The house was sold in July of 1960, when petitioners were transferred to Australia by Caltex. Petitioners remained in Australia until October of 1971, except for a six-month period in 1963 when Mr. Walstow was in New York City and lived in a hotel in order to complete his residency requirement for becoming a United States citizen. Having satisfied the residency requirement, Mr. Walstow became a United States citizen in 1963. (Mrs. Walstow continues to be a British subject.)

7. In October of 1971, petitioners moved from Australia to New York City. They left a part of their household furnishings in storage in Sydney. Petitioners' daughter remained in college in Australia. Petitioners state that they expected that they would be in New York temporarily, pending another overseas assignment. Petitioners rented an apartment in New York City. During 1972, while based in New York, Mr. Walstow spent two months working in Spain. In May of 1973, petitioners moved to Spain, where Mr. Walstow was employed by Caltex Oil Sae.

In an affidavit dated May 18, 1977, petitioners state:

"That, on our departure from the State of New York on May 15, 1973, it was our intention to live elsewhere for the remainder of our natural lives.

In pursuit of this intention we lived outside of the United States until March 7, 1977, while employed in Spain, and subsequently in retirement, we have been living on vacation in various countries and in various states of the United States....We depose that at no time has it ever been our intention to be resident in the State of New York."

8. Petitioners own no property in the State of New York and do not rent, lease or own any apartment in the State of New York. They own property in England and in Florida.

9. Petitioners have never voted in the United States in either city, state or Federal elections, nor have they ever registered to vote.

10. In 1973 petitioners spent a total of 135 days in New York State.

#### CONCLUSIONS OF LAW

A. That "Domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent." 20 NYCRR 102.2(d)(1). Petitioners did not intend New York State to be their permanent home; thus, they were never domiciliaries of New York State.

A. 1) That Mr. Walstow was born and raised in the United Kingdom and was assigned to Bahrain for twenty years by his employer, Caltex. In 1957 he was transferred to New York by Caltex for a two-year training assignment. Subsequently, his training assignment was terminated. Though petitioners moved from a rented, furnished house in 1958 to a house they had purchased in Rockland County, New York, Mr. Walstow continued to be employed by Caltex and was thus subject to further overseas assignment. In July of 1960, petitioners sold their house in Rockland County and moved to Australia, where they lived for eleven years.

A. 2) That in 1958 Mr. Walstow had obtained an immigrant visa from the United States Immigration and Naturalization Service with a view to becoming a naturalized United States citizen at a later date. In 1963 Mr. Walstow returned to New York from Australia to complete the necessary residency requirement. He lived in a hotel in New York City for a six-month period and became a naturalized United States citizen. Citizenship, however, does not determine domicile. 20 NYCRR 102.2(d)(3). Following his six-month stay in New York, Mr. Walstow returned to Australia.

A. 3) In October of 1971, having left their daughter (in college) in Australia, as well as some of their household furnishings, petitioners returned to New York City. Mr. Walstow expected to be in New York City temporarily, pending a new assignment by Caltex. Petitioners rented an apartment in New York City. During 1972, Mr. Walstow spent two months working in Spain for his employer. In May of 1973, Mr. Walstow was assigned to Spain to work for Caltex Oil Sae. in Tarragona, where petitioners lived until March 7, 1977.

At no time did petitioners intend to make their fixed and permanent home in New York.

B. That in the 1973 tax year, petitioners spent 135 days in New York State; thus, they are non-resident individuals.

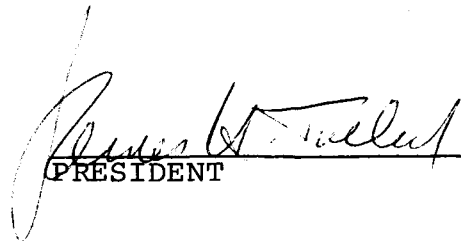


C. That the petition of Frederick P. and Muriel K. Walstow is granted. The Notice of Deficiency dated January 26, 1976 is cancelled. The Income Tax Bureau is directed to ascertain whether petitioners are entitled to a refund, which, if such be due, shall be paid to them with interest.

DATED: Albany, New York

STATE TAX COMMISSION

March 15, 1979

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER