

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jack R. & Patricia J. Walker :

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 19th day of September, 1980, he served the within notice of Decision by certified mail upon Jack R. & Patricia J. Walker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

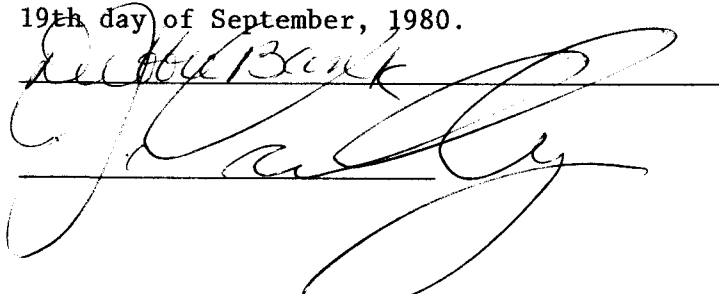
Jack R. & Patricia J. Walker  
Caixa Postal 400, Av. Barao Rio Branco, 960  
12,200 Sao Jose dos Campos  
S. P., BRAZIL

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

19th day of September, 1980.



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

September 19, 1980

Jack R. & Patricia J. Walker  
Caixa Postal 400, Av. Barao Rio Branco, 960  
12,200 Sao Jose dos Campos  
S. P., BRAZIL

Dear Mr. & Mrs. Walker:

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

Very truly yours,

STATE TAX COMMISSION

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   | : |          |
| JACK R. WALKER and PATRICIA J. WALKER          | : | 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, Jack R. Walker and Patricia J. Walker, Caixa Postal 400, Av. Barao Rio Branco, 960, 12,200 Sao Jose dos Campos - S.P. Brasil, 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. 16587).

On January 29, 1979, petitioners, Jack R. Walker and Patricia J. Walker, advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission on the entire record contained in the file.

ISSUE

Whether petitioners were resident individuals of New York State for the year 1973.

FINDINGS OF FACT

1. Petitioners, Jack R. Walker and Patricia J. Walker, filed a New York State personal income tax return for the year 1973, in which they indicated their period of New York State residence was from January 1, 1973 to July 19, 1973. They prorated their standard deduction and their exemptions taken on this return based on their period of residency.

2. The Income Tax Bureau held that additional tax is due per petitioners' 1973 New York State income tax return as New York State does not recognize a

change of residence to a foreign country. Therefore, petitioners were held taxable on all income shown per petitioners' Federal income tax return. A Notice of Deficiency was issued June 28, 1976 for \$1,595.45 in personal income tax due, plus \$263.57 in interest, for a sum of \$1,859.02 due.

3. Petitioners were domiciled in Venezuela at the time petitioner Jack R. Walker accepted a new position in Brasil with Kodak Brasileira Comercio e Industria Ltda, a Brazilian corporation. His new employer requested that petitioner Jack R. Walker go to Rochester, New York, for a short training assignment prior to moving from Venezuela to Brasil. The training period commenced August 10, 1972 and lasted through July 1, 1973. During this training period, petitioner Jack R. Walker spent the period of time from February 12, 1973 to April 13, 1973, living in Brasil.

4. While on the training assignment in Rochester, New York, petitioners had a short-term lease on a furnished house in the Rochester area. After July 19, 1973, petitioners did not own property or have possessions in New York State or in any other part of the United States.

5. Petitioners entered Brasil on permanent immigrant visas and since entering Brasil, have been subject to all Brazilian State and Federal taxes.

6. Petitioners have Brasil driver's licenses.

7. Petitioner's length of employment in Brasil, as well as the length of stay in Brasil, was indefinite.

8. The wage and tax statement from Eastman Kodak Company of Rochester, New York, shows that petitioner Jack R. Walker earned \$17,277.01, of which \$1,054.65 was withheld for New York State tax for the period January 1, 1973 through July 19, 1973.

CONCLUSIONS OF LAW

A. That petitioners, Jack R. Walker and Patricia J. Walker, did not establish a domicile or permanent place of abode within New York State and that accordingly petitioners are not residents of New York State in accordance with section 605 of the Tax Law and 20 NYCRR 102.2(d).

B. That petitioners are nonresidents of New York State and are taxable as nonresidents on their income from New York sources, including their salary or other compensation for services performed in New York State in accordance with 20 NYCRR 102.2(e).

C. That the Audit Division is hereby directed to recompute the Notice of Deficiency issued June 28, 1976 based on a total New York income of \$17,277.01 and allowing for the maximum standard deduction and exemptions that petitioners are entitled to. Petitioners are also to be given credit for taxes withheld in the amount of \$1,054.65, and if an overpayment or underpayment is computed, it shall be together with any interest that may be lawfully owing.

D. That the petition of Jack R. Walker and Patricia J. Walker is granted to the extent indicated in Conclusion of Law "C", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER