

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward V. Hofler :  
and Brenda Hofler :  
: 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 Years :  
1971 - 1973 :

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State of New York  
County of Albany

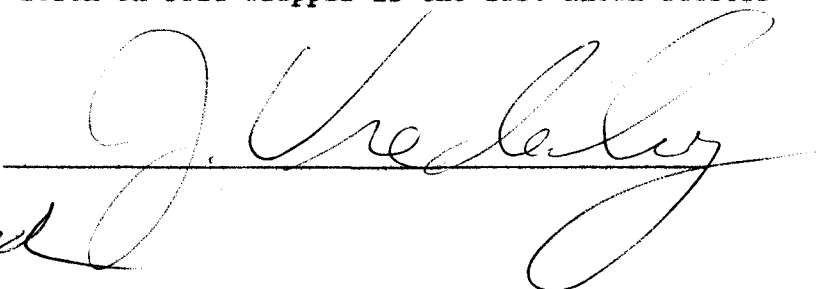

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of May, 1981, he served the within notice of Decision by certified mail upon Edward V. Hofler, and Brenda Hofler the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward V. Hofler  
and Brenda Hofler  
29 Kingwood Park  
Poughkeepsie, NY 12601

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  
15th day of May, 1981.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Edward V. Hofler  
and Brenda Hofler

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 of the Tax Law for the Years :  
1971 - 1973

State of New York  
County of Albany

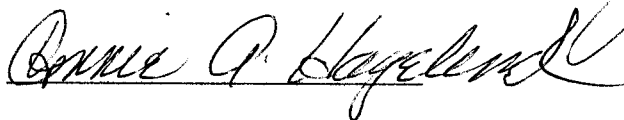
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of May, 1981, he served the within notice of Decision by certified mail upon John O'Shea the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

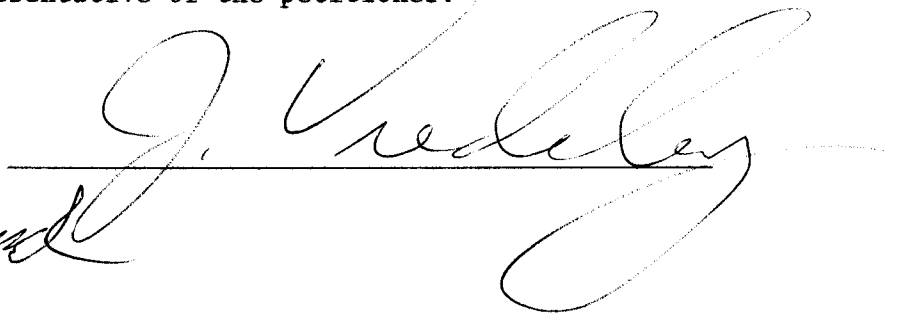
Mr. John O'Shea  
Price Waterhouse & Co.  
153 E. 53rd St.  
New York, NY 10022

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  
15th day of May, 1981.

  
Bonnie P. Hagelund

  
Jay Vredenburg

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

May 15, 1981

Edward V. Hofler  
and Brenda Hofler  
29 Kingwood Park  
Poughkeepsie, NY 12601

Dear Mr. & Mrs. Hofler:

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  
John O'Shea  
Price Waterhouse & Co.  
153 E. 53rd St.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
EDWARD V. HOFER and BRENDA HOFER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

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Petitioners, Edward V. Hofer and Brenda Hofer, 29 Kingwood Park, Poughkeepsie, New York 12601, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 18596).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1978 at 2:45 P.M. Petitioners appeared by Price, Waterhouse & Co. (John O'Shea, Esq.). The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State for income tax purposes during the years 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, Edward V. Hofer and Brenda Hofer, did not file New York State personal income tax returns for the years 1971 and 1972. On February 28, 1977, the Audit Division issued a Statement of Audit Changes and a Notice of Deficiency against petitioners for 1971, 1972 and 1973, asserting a deficiency for personal income tax due of \$7,911.50 for the year 1971 and \$14,302.03 for the year 1972 or a total of \$22,213.53.

8. During 1972, petitioner Edward V. Hofler returned to the United States from Japan on six occasions and, in the aggregate, did not spend more than thirty days of the taxable year 1972 in New York State.

9. During the period while the petitioners and their children were living in Japan as aforesaid, petitioner Edward F. Hofler leased the aforesaid residence located at 29 Kingwood Park, Poughkeepsie, New York, to a person not related to him, namely one John H. Wilson, for a term of one year beginning February 1, 1972 and ending January 31, 1973, at a rental of \$350.00 a month. Said lease was in writing and, among other things, provided that if the said tenant, John H. Wilson "is transferred by his employer beyond a distance of fifty miles, this contract is null and void" after a specified number of days notice of the transfer to petitioner Edward V. Hofler.

Thereafter, the term of said lease was extended to July 15, 1973 pursuant to correspondence between the said tenant and petitioner Edward V. Hofler, said petitioner advising said tenant by letter dated June 15, 1973, that said petitioner's family would arrive in Poughkeepsie on July 15, 1973 and that said tenant could remain in said premises, if he so desired, until July 15, 1973.

10. Prior to the leasing of said premises to said John H. Wilson as aforesaid, petitioner Edward V. Hofler leased the said residence to a person not related to him, namely one Clifton Wignall, for a period beginning on or about August 15, 1970 and ending on or about August 15, 1971 at a rental of \$400.00 a month.

11. During the course of the hearing held herein as aforesaid, the following concession and statement were made by counsel for the Audit Division:

"Mr. Hearing Officer, the Department concedes that for the tax years 1971 and 1972, the petitioner maintained a permanent place of abode outside the United States and did not spend more than 30 days of those taxable years within the State of New York except for times in transit.

The only issue remaining is whether or not the retention of taxpayer's home located at 29 Kingwood Park, Poughkeepsie, New York, constitutes the maintenance of a permanent place of abode of the State of New York for the tax years in question."

12. Petitioners conceded in an affidavit dated December 15 1978 that they were domiciliaries of New York State for the calendar years 1971 and 1972.

#### CONCLUSIONS OF LAW

A. That any person domiciled in New York State is a resident for income tax purposes for a specific year unless for that year he satisfies all three of the following requirements:

- (1) He maintains no permanent place of abode in this State during such year,
- (2) he maintains a permanent place of abode elsewhere during such entire year, and
- (3) he spends in the aggregate not more than 30 days of the taxable year in this State [20 NYCRR 102.2(b)]

That the record clearly shows petitioners have satisfied requirements (2) and (3) above.

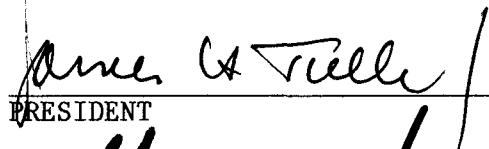
B. That during 1971 and 1972 petitioners leased to two unrelated individuals their home in Poughkeepsie, New York. That during the terms of the leases, petitioners did not have the right to live in the house; that right rested in the tenants. Therefore, petitioners cannot be deemed to have maintained a permanent place of abode in New York State during 1971 and 1972. That petitioners have satisfied all three requirements of 20 NYCRR 102.2(b) to be considered nonresidents of New York State.

C. That the petition of Edward V. Hofler and Brenda Hofler is granted and the Notice of Deficiency issued February 28, 1977 is cancelled.

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER