

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mark & Jennie P. Kormes :
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 :
1977. :

AFFIDAVIT OF MAILING

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, 1981, he served the within notice of Decision by certified mail upon Mark & Jennie P. Kormes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark & Jennie P. Kormes
4100 Galt Ocean Dr., Apt. 1503
Ft. Lauderdale, FL 33308

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, 1981.

Annice A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mark & Jennie P. Kormes :
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 :
1977.

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, 1981, he served the within notice of Decision by certified mail upon John W. Kormes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. Kormes
1521 Walnut St.
Philadelphia, PA 19102

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, 1981.

Annie A. Haglund

J. Vredenburg

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

October 9, 1981

Mark & Jennie P. Kormes
4100 Galt Ocean Dr., Apt. 1503
Ft. Lauderdale, FL 33308

Dear Mr. & Mrs. Kormes:

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 & 1312 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 W. Kormes
1521 Walnut St.
Philadelphia, PA 19102
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MARK KORMES and JENNIE P. KORMES	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Articles 22 and 30 of the Tax Law for	:	
the Year 1977.	:	

Petitioners, Mark Kormes and Jennie P. Kormes, 4100 Galt Ocean Drive, Fort Lauderdale, Florida 33308, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the year 1977 (File No. 26945).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1980 at 9:15 A.M. Petitioners, Mark Kormes and Jennie P. Kormes, appeared by John W. Kormes, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz and Michael Gitter, Esqs., of counsel).

ISSUES

I. Whether petitioners' request for a determination on default should be granted.

II. Whether petitioners, Mark Kormes and Jennie P. Kormes, were domiciled in New York State during the year 1977.

FINDINGS OF FACT

1. Petitioners, Mark Kormes and Jennie P. Kormes, timely filed a New York State Income Tax Resident Return for the year 1977, reporting their income separately, on which New York State and City taxes, prepaid through withholding

and estimated tax payments, were shown in the sum of \$1,245.00. The tax return indicated, in error, that the overpayment shown be applied toward their 1978 estimated tax return. On December 1, 1978, the Audit Division acknowledged petitioner's error in indicating that the overpayment be applied to 1978 estimated taxes, and authorized a refund, which was subsequently issued in the amount of \$131.90.

2. On February 23, 1979, the Audit Division received an "amended" New York State Income Tax Nonresident Return, along with an "amended" Nonresident Earnings Tax Return for the City of New York, both for the year 1977, on which no New York State or City income was reported, and a refund of \$1,245.00 was requested.

3. On June 25, 1979, the Audit Division issued a Notice of Disallowance denying the refund claim of \$1,245.00.

4. On June 3, 1980, a letter was issued to petitioner's representative, which stated:

"Since it is determined that the above issue cannot be resolved through a pre-hearing conference or that a pre-hearing conference would serve no useful purpose, you are hereby advised that the original petition filed has been accepted as a Perfected Petition under Section 601.5 of the Rules of Practice. (copy enclosed)"

"Said petition has been forwarded to the Law Bureau for response pursuant to Section 601.6 of the Rules."

On July 29, 1980, the Law Bureau issued an answer to petitioners' representative pursuant to 20 NYCRR 601.6. Petitioners' representative denied ever receiving the letter of June 3, 1980, or the answer of July 29, 1980, and accordingly, requested a determination on default.

5. Petitioners, Mark Kormes and Jennie P. Kormes, were residents of the State and City of New York and maintained an apartment at 119 East 84th Street in the borough of Manhattan. In May 1976, petitioners went to Puerto Rico and

rented a furnished apartment with the intention of returning to New York. Subsequently, both petitioners became ill and were hospitalized in Philadelphia, Pennsylvania. Upon recovery, petitioners' physician advised them that the climate in the northeastern portion of the United States was hazardous to their health and could induce a serious relapse.

6. In late 1976, petitioners decided to stay in Puerto Rico permanently and instructed their children to remove their own personal belongings from the New York apartment, and to remove other personal articles belonging to petitioners for shipment to Puerto Rico. However, petitioners' furniture, paintings and other art items were to remain in the apartment until such time they were able to dispose of them.

7. During the year 1977, petitioner Jennie P. Kormes was diagnosed to have cancer, but was unable to secure satisfactory medical care in Puerto Rico. In December 1977, both petitioners returned to Philadelphia where petitioner Jennie P. Kormes was hospitalized for cancer treatment. At that time, petitioner Mark Kormes visited New York for approximately eight to ten days for the purpose of playing bridge.

In January 1978, both petitioners returned to Puerto Rico and remained there until the summer of 1978, when they moved permanently to Florida, and where they were able to obtain more competent medical care.

8. During the summer of 1978, petitioners, Mark Kormes and Jennie P. Kormes, returned to their apartment in New York City for the purpose of removing the furniture and art items contained therein. Evidence submitted, supported by sworn testimony indicated that the New York apartment was maintained during the year at issue solely due to petitioner's ill health, which prevented them from removing its contents. Petitioners did not consider the apartment as a

place of abode, but rather as a storage place maintained until such time as their health permitted them to remove its contents, and accordingly terminate their interest in the apartment.

9. In 1977, petitioners executed a will in Puerto Rico, listing their domicile as Santurce, Puerto Rico. In 1978, petitioners executed a new will in Florida, listing their domicile as Florida.

10. Petitioners, Mark Kormes and Jennie P. Kormes, filed a joint New York State Income Tax Nonresident Return for the year 1978 indicating that they were nonresident individuals for the entire year and had no New York taxable income. Accordingly, the tax return requested a full refund of State estimated taxes paid of \$1,021.84. On June 8, 1979, a refund check was issued for \$1,021.84 for the tax year 1978.

CONCLUSIONS OF LAW

A. That 20 NYCRR 601.6(4) provides, that the State Tax Commission may either grant a default or "shall determine such other appropriate relief that it deems is warranted." The record does not indicate that the alleged nonreceipt of the letter of June 3, 1980 and the answer of July 29, 1980, (see paragraph 4 of this decision) have unduly prejudiced or adversely affected petitioners' position in this matter; nor is there any evidence or indication of a denial of due process. Accordingly, a determination on default is denied, and appropriate relief is deemed to be unwarranted.

B. That the evidence submitted is clear and convincing that petitioners', Mark Kormes and Jennie P. Kormes, acquired the necessary intent to effect a change of domicile upon their return to Puerto Rico in late 1976, and that their acquisition of such intent was unplanned and fortuitous.

C. That petitioners, Mark Kormes and Jennie P. Kormes, were not domiciled in New York State during the year 1977, and were nonresident individuals within the meaning and intent of section 605(b) of the Tax Law.

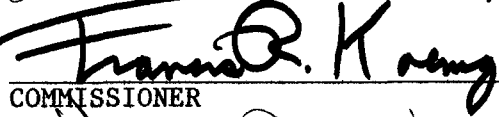
D. That the petition of Mark Kormes and Jennie P. Kormes is granted and the Audit Division is directed to authorize a refund in the sum of \$1,113.10 (\$1,245.00 minus previous refund of \$131.90) together with such interest as may be lawfully owing.

DATED: Albany, New York

007 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

October 9, 1981

Mark & Jennie P. Kormes
4100 Galt Ocean Dr., Apt. 1503
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Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John W. Kormes
1521 Walnut St.
Philadelphia, PA 19102
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



PERSON CHECKED

Inmate

Address

First Name

Last Name

Age

Sex

Height

Weight

Eye Color

Hair Color

Birth Date

Birth Place

Marital Status

Occupation

Education

Religion

Other

Mark & Jennie P. Kormes
4100 Galt Ocean Dr. # Apt. 1003
Ft. Lauderdale, FL 33308

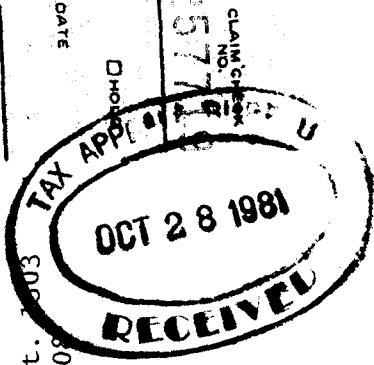
DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct 1980



BA Sent
11/19/81

