

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
M. Todd Myers :
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 :
1971.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon M. Todd Myers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. Todd Myers
353 Cedar Way
Laguna Beach, CA 92652

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
20th day of November, 1981.

Annie P. Hegeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
M. Todd Myers :
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 :
1971.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Jack Wong the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

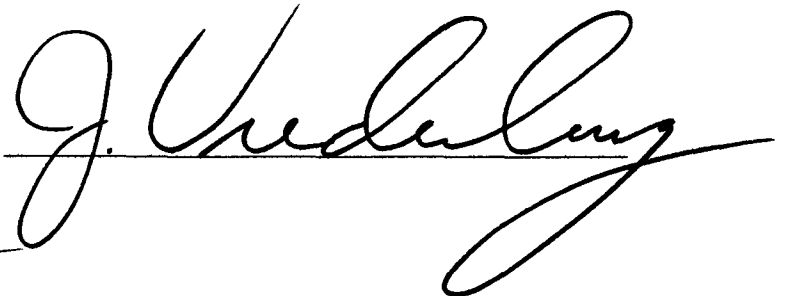
Jack Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 10004

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
20th day of November, 1981.





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

November 20, 1981

M. Todd Myers
353 Cedar Way
Laguna Beach, CA 92652

Dear Mr. Myers:

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
Jack Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
M. TODD MYERS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioner, M. Todd Myers, 353 Cedar Way, Laguna Beach, California 92652, 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 1971 (File No. 13599).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 18, 1979 at 1:15 P.M. Petitioner appeared by Jack Wong. The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq. of counsel).

ISSUES

I. Whether petitioner, M. Todd Myers, was a resident of New York State during any part of taxable year 1971.

II. Whether any of petitioner's 1971 income is taxable for New York State personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, M. Todd Myers, did not file a New York State personal income tax return for 1971.

2. On February 19, 1974 the Income Tax Bureau issued a Statement of Audit Changes wherein petitioner's tax liability was computed from his Federal adjusted gross income since a New York State return was not on record as being filed, and he failed to reply to an inquiry letter dated July 30, 1973.

Accordingly, a Notice of Deficiency was issued against petitioner on April 11, 1975, asserting personal income tax in the amount of \$1,991.60, section 685(a)(1) and 685(a)(2) penalties of \$806.60, and interest of \$357.35, for a total due of \$3,155.55.

3. Petitioner contended that he was a nonresident of New York State during the entire taxable year at issue. He further contended that he had no income which was derived from or connected with New York sources.

4. Petitioner's 1971 United States Individual Income Tax Return was filed whereon his address was listed as 305 East 24th Street, Apt. 11J, New York, New York 10010. On said return, income was reported from various sources, as follows:

Wages from Market Revere Corp.	\$ 7,200.00
Akron, Ohio	
Taxable Dividends	416.86
Interest Income	1,786.16
Capital Gains from Sale of Securities	18,739.36
Less Nonreimbursed Business Expense	(1,391.65)
Total Federal Adjusted Gross Income	<u>\$26,750.73</u>

5. Petitioner, M. Todd Myers, was born in Akron, Ohio on March 28, 1948. He remained in Akron through mid 1966, at which time he entered the University of Wisconsin, attending same until graduation in January, 1970. After graduating, petitioner vacationed in Colorado until April 30, 1970. In May, 1970 he returned to Akron, Ohio.

6. In January, 1971, the year at issue herein, petitioner commenced employment with Market - Revere Company, a family owned Ohio business. Such employment involved research relating to the video cassette industry. In the performance of his duties, petitioner made several trips to New York. While in New York on business, he stayed in various hotels and at the apartment of a friend. On June 30, 1971, petitioner's employment with Market - Revere Company

terminated. No documentation or testimony was presented during the hearing to establish the extent of services rendered in New York for Market - Revere.

7. In August, 1971, petitioner came to New York to seek employment. While doing so, he stayed at a friend's apartment located at 305 East 24th Street, the address listed on his Federal Return. He remained at such address until the latter part of 1973, at which time he moved to the State of California.

8. From August, 1971, through the close of the taxable year, petitioner was unemployed. In September, 1972, petitioner secured employment in New York with the advertising agency of Sullivan Stauffer, Cardwell and Bayliss. Said employment terminated one year later.

9. Petitioner testified that he had no intention of residing in New York State on a permanent basis until he found employment. He contended that the address of his friend was listed on his Federal return for convenience purposes.

10. Petitioner contended that during 1971 he did not maintain a lease on an apartment or a telephone listing in New York State. Petitioner had a driver's license and bank account in Ohio rather than New York.

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)]. Petitioner, born and raised in the State of Ohio, maintained his Ohio domicile during the entire taxable year 1971.

B. That during 1971, petitioner, M. Todd Myers, was not a resident of New York State within the meaning and intent of section 605(a)(2) of the Tax Law.

C. That petitioner's income from dividends, interest and capital gains was not derived from or connected with New York sources. Accordingly, such

income is not taxable for New York State personal income tax purposes within the meaning and intent of sections 632(a) and 632(b) of the Tax Law.

D. That the New York adjusted gross income of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into his Federal adjusted gross income, but only if, and to the extent that, his services were rendered within this State. [20 NYCRR 131.4(b)]. That isolated "business trips" of petitioner, a nonresident rendering personal services to a foreign corporation with no place of business in New York, do not constitute New York source income as services rendered within this State.

E. That the penalties imposed under sections 685(a)(1) and 685(a)(2) are waived due to reasonable cause.

F. That the petition of M. Todd Myers is granted.

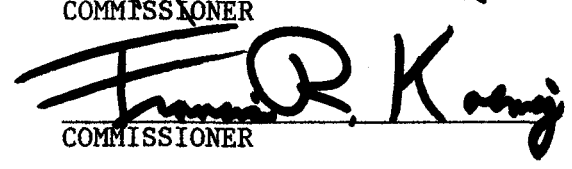
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER