

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Joel E. & Susan Bickel :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976. :  
:

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Joel E. & Susan Bickel, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

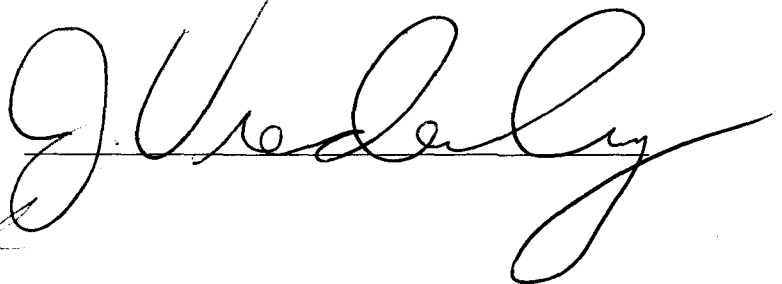
Joel E. & Susan Bickel  
108 Seafield Ln.  
Westhampton Beach, NY 11978

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  
3rd day of December, 1982.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Joel E. & Susan Bickel :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976. :

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Richard Melchner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Richard Melchner  
Saltzman, Melchner & Co.  
545 Fifth Ave.  
New York, NY 10017

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  
3rd day of December, 1982.

  
COMMISSIONER  
STATE OF NEW YORK  
TAXATION  
SECTION 174



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

December 3, 1982

Joel E. & Susan Bickel  
108 Seafield Ln.  
Westhampton Beach, NY 11978

Dear Mr. & Mrs. Bickel:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard Melchner  
Saltzman, Melchner & Co.  
545 Fifth Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOEL E. BICKEL and SUSAN BICKEL	:	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 1976.	:	

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Petitioners, Joel E. Bickel and Susan Bickel, 108 Seafield Lane, Westhampton Beach, New York 11978, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 29042).

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 December 15, 1981 at 1:15 P.M. Petitioner appeared by Saltzman, Melchner & Co., (Richard Melchner, C.P.A.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioners were resident individuals of New York City in 1976 and, as such, subject to the imposition of New York City personal income tax.

FINDINGS OF FACT

1. Petitioners, Joel E. Bickel and Susan Bickel, husband and wife, timely filed a New York State Income Tax Resident Return (Form IT-201/208) and a Nonresident Earnings Tax Return for the City of New York (Form NYC-203) for the year 1976. Petitioners listed their address on each of these returns as 108 Seafield Lane, Westhampton Beach, New York 11978.

2. On October 4, 1979 the Audit Division issued to petitioners a Notice of Deficiency asserting additional tax due for 1976 in the amount of \$5,046.95 plus interest.

3. A Statement of Audit Changes dated March 8, 1979 explained the above asserted deficiency. It was based on a recomputation of petitioners' 1976 tax liability to reflect imposition of unincorporated business tax on petitioners' business activities and imposition of New York City resident income tax on the basis that petitioners maintained a permanent place of abode in New York City and spent more than 183 days in New York City in 1976. After allowing petitioners an additional \$2,725.14 of business expenses, the recomputation resulted in additional tax due as follows:

New York State personal income tax due	\$ 9,080.43
New York City personal income tax due	2,687.52
Unincorporated Business Tax due	3,408.18
Equals:	<u>\$15,176.13</u>
Less: tax previously paid	<u>(10,129.18)</u>
Equals: total tax due	<u>\$ 5,046.95</u>

4. At a pre-hearing conference, petitioners and the Audit Division agreed to cancellation of the unincorporated business tax. The amount of the above asserted deficiency was reduced to \$1,638.77 (plus minimum statutory interest) and the only remaining issue concerns whether petitioners were New York City residents subject to the imposition of New York City personal income tax in 1976.

5. Petitioners purchased a home in Westhampton Beach, New York in October, 1971. Subsequently, in June of 1975, petitioners purchased a cooperative apartment located on East 79th Street in New York City.

6. According to petitioners' testimony their son suffers from dyslexia, a type of learning disability, and that part of the recommended treatment for his

disability involves providing an educational environment of individualized instruction in classes containing a small number of students. Also recommended was private tutoring and speech therapy. Since petitioners felt this type of specialized educational environment was not available in the Westhampton Beach schools, they had their son attend private schools located in New York City which provided the recommended type of educational environment.

7. In 1976, petitioners' son attended the Village Community School located on West 10th Street in New York City, where he was enrolled as a day student only. At the end of the school day he would either return to petitioners' East 79th Street apartment or go to a family relative's home in New York City. During the summer months when school was not in session, he lived at petitioners' Westhampton Beach home.

8. Petitioners testified the Village Community School was in session for less than 180 days per year, and that their son returned after school to the East 79th Street apartment on "approximately one-hundred (100) days" in 1976.

9. Petitioners further testified they used the East 79th Street apartment on "about one-hundred (100) days" in 1976. Petitioner Susan Bickel frequently met petitioners' son there at the conclusion of his school day. Petitioner Joel E. Bickel used the East 79th Street apartment from "time to time" for entertainment purposes in connection with his work as a salesman for two companies, and also occasionally stayed there at night rather than return to Westhampton Beach when he was in New York City on business.

10. During 1976, Mr. Bickel was involved as an investor in Tuthill Associates, a real estate business in Westhampton Beach. He testified this business occupied about one-half of his working days in Westhampton Beach. He did no business for Tuthill Associates in New York City.

11. Petitioners were issued drivers licences and registered their cars as residents of Westhampton Beach. They voted in Westhampton Beach in 1976, as well as in all other years since they bought their home in Westhampton Beach.

12. Petitioners received most of their mail at the Westhampton Beach address, although service bills (such as telephone bills and utility bills) for the East 79th Street apartment were sent directly to that apartment. Petitioners maintained one personal checking account and one savings account in New York City (Mrs. Bickel also had a savings account in her name only in New York City), but these were not petitioners' principal or regularly used bank accounts.

13. Petitioners did not belong to any social clubs in New York City in 1976. They were, however, members of a synogogue (Temple Shaaray Tefila) located in New York City. In addition, receipts for donations of used clothing in 1976 to a particular thrift shop located in New York City list Mrs. Bickel, the donor, as residing at the East 79th Street apartment address. However, petitioners testified the donations were made in support of this particular shop as opposed to other shops as an accommodation to one of their Westhampton Beach neighbors.

14. A schedule dated December 28, 1978 and submitted into evidence at the hearing by petitioners purports to show the days petitioners spent in Westhampton Beach in 1976. However, this schedule is not supported by testimony or any other evidence as to its preparation or specific contents.

15. Petitioners paid approximately thirty thousand dollars (\$30,000.00) to purchase their East 79th Street apartment, excluding furnishings which petitioners supplied themselves. According to petitioners' testimony, they purchased the apartment because they felt it was a good investment and also for the convenience of having a place to take their son after school or after sessions with his

tutor or speech therapist. Prior to purchase of the East 79th Street apartment, petitioners had rented an apartment in New York City located on 16th Street for the purpose of having a convenient place to take their son after school.

#### CONCLUSIONS OF LAW

A. That section 1305(a)(2) of the Tax Law provides in pertinent part that a city resident individual includes an individual "...who is not domiciled in such city but maintains a permanent place of abode in such city and spends in the aggregate more than one hundred eighty-three days of the taxable year in such city,...".

B. That regulations of the State Tax Commission in pertinent part provide:

"A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home." [20 NYCRR 102.2(d)(4)].

Furthermore, "[a] permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him,..." [20 NYCRR 102.2(e)].

C. That petitioners were domiciled in Westhampton Beach and not in New York City in 1976. However, petitioners did maintain a permanent place of abode in New York City in 1976. Petitioners have failed to provide sufficient credible evidence to sustain the burden of proving that they spent in the aggregate less than 183 days in New York City in 1976. Accordingly, petitioners were resident individuals of New York City in 1976 and, as such, subject to the imposition of the New York City personal income tax on residents under Article 30 of the Tax Law for that year.

D. That the petition of Joel E. Bickel and Susan Bickel is granted to the extent indicated in Finding of Fact "4", and is in all other respects denied. The Audit Division is hereby directed to modify the Notice of Deficiency issued



October 4, 1979 to reflect the agreement reached at the pre-hearing conference (see Finding of Fact "4") and the Notice of Deficiency as so modified together with such minimum statutory interest as may be lawfully owing is sustained.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER