

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
William R. & Anita G. Devries : 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 :  
1974.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon William R. & Anita G. Devries, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William R. & Anita G. Devries  
191 Grand Central Ave.  
Amityville, NY 11701

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 April, 1982.

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

April 9, 1982

William R. & Anita G. Devries  
191 Grand Central Ave.  
Amityville, NY 11701

Dear Mr. & Mrs. Devries:

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

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	:	
WILLIAM R. DEVRIES AND ANITA G. DEVRIES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

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Petitioners, William R. DeVries and Anita G. DeVries, 191 Grand Central Avenue, Amityville, New York 11701, 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 1974 (File No. 23889).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 4, 1981 at 9:15 A.M. Petitioner William R. DeVries appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

- I. Whether petitioners are taxable as resident individuals for the year 1974.
- II. Whether petitioners' failure to file a personal income tax return for the year 1974 was due to reasonable cause, and not willful neglect, thereby permitting the penalties asserted pursuant to sections 685(a)(1) and (a)(2) of the Tax Law to be waived.

FINDINGS OF FACT

1. Petitioners, William R. DeVries and Anita G. DeVries, filed a 1974 U.S. Individual Income Tax Return listing their address as 191 Grand Central

Avenue, Amityville, New York. Said Federal return reported adjusted gross income of \$21,158.27 and, in computing taxable income, petitioners subtracted itemized deductions of \$5,448.00. Petitioners did not file a 1974 New York State personal income tax return.

2. On July 31, 1978 the Audit Division issued to petitioners a Notice of Deficiency asserting that for the year 1974 additional personal income tax of \$1,082.88 was due, together with penalties [Tax Law sections 685(a)(1) and (a)(2)] and interest. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes, also dated July 31, 1978, wherein petitioners' 1974 income tax liability was computed "...from information obtained from the Internal Revenue Service...". The Audit Division in the computation of additional tax due allowed petitioners the maximum standard deduction of \$2,000.00.

3. During the tax year in question petitioner William R. DeVries was an employee of Applied Behavioral Science, Inc. (hereinafter "ABS") of Waukigan, Illinois. ABS had yearly contracts with the United States Postal Service which required them to provide management consultant and training services to the Postal Service. Petitioner William R. DeVries was assigned by ABS to cover the post offices located in the northeastern United States, with the exception of all of New York State.

4. In order to more efficiently perform his employment duties, which required extensive travel, petitioner William R. DeVries established living quarters in Copiague, New York in late 1973. This geographical area was chosen due to it's proximity to busy airports.

5. The living quarters established in Copiague consisted of a partly furnished house which petitioners leased on a yearly basis. Said lease expired in November, 1974, at which time petitioners purchased a house in Amityville, New York. During all of 1974 petitioners also maintained an apartment in

Chicago, Illinois which was leased on a yearly basis. The lease on the apartment in Illinois expired at the end of 1974 and petitioners did not renew said lease.

6. Petitioners failed to present any credible evidence at the hearing held herein as to the duration of petitioner William R. DeVries' job assignment with ABS. Petitioner William R. DeVries has not shown that his stay in New York was for a fixed and limited period designed for the accomplishment of a particular purpose as opposed to an indefinite stay. ABS did not obtain the Postal Service contract for the year 1975; however, petitioners continued to reside, and in fact still reside, at the Amityville address.

7. Petitioner William R. DeVries, although residing in New York, did not perform any services for his employer within the State during 1974. A 1974 New York State income tax return was not filed due to petitioners' belief that they were nonresidents of New York who earned no income from New York State sources. Petitioners' 1974 Federal income tax return was timely filed as well as New York State income tax returns for years subsequent to 1974.

#### CONCLUSIONS OF LAW

A. That section 605(a)(2) of the Tax Law defines a resident as an individual "who is not domiciled in the state but maintains a permanent place of abode in the state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state...".

B. That 20 NYCRR 102.2(e) defines a permanent place of abode as

"...a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. \*\*\* Also, a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose."

C. That 20 NYCRR 102.2(c) provides in pertinent part that

"Any person domiciled outside the State who maintains a permanent place of abode within the State during any taxable year and claims to be a nonresident must keep and have available for examination by the Tax Commission adequate records to substantiate the fact that he did not spend more than 183 days of such taxable year within the State."

D. That section 689(e) of the Tax Law places the burden of proof upon petitioners to overcome the State's deficiency. That petitioners have failed to meet their burden of proof to show that the abode maintained in New York during 1974 was not a permanent place of abode and that they did not spend more than 183 days of the taxable year within the State. Accordingly, petitioners are deemed resident individuals within the meaning and intent of section 605(a)(2) of the Tax Law.

E. That petitioners' 1974 income tax liability is to be recomputed allowing a New York itemized deduction of \$5,448.00 in lieu of the \$2,000.00 standard deduction.

F. That petitioners' failure to file a 1974 New York State income tax return was due to reasonable cause and not willful neglect. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and (a)(2) of the Tax Law are waived.

G. That the petition of William R. DeVries and Anita G. DeVries is granted to the extent indicated in Conclusions of Law "E" and "F", supra, and that, except as so granted, the petition is in all other respects denied.

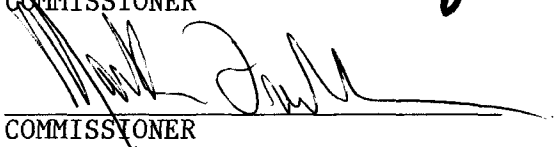
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER