

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Hugo T. & Mary P. Fischer : 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 :  
1968 - 1975.

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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Hugo T. & Mary P. Fischer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hugo T. & Mary P. Fischer  
Box 89  
Northport, NY 11768

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  
4th day of August, 1982.

Annice A. Heglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Hugo T. & Mary P. Fischer

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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 :  
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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Morris A. Kaplan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

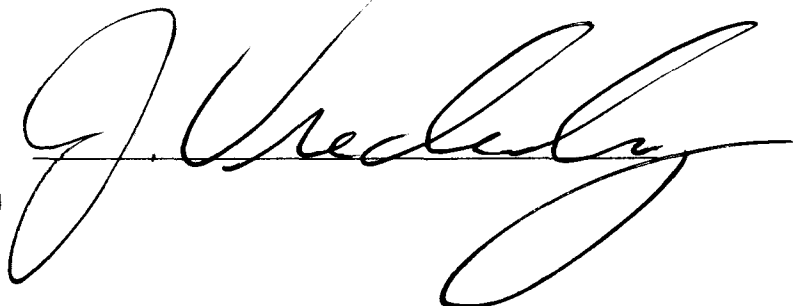
Morris A. Kaplan  
Morris & Kaplan  
6 Red Deer Ln.  
Huntington, NY 11743

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  
4th day of August, 1982.

Bonnie A. Hagelund



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

August 4, 1982

Hugo T. & Mary P. Fischer  
Box 89  
Northport, NY 11768

Dear Mr. & Mrs. Fischer:

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  
Morris A. Kaplan  
Morris & Kaplan  
6 Red Deer Ln.  
Huntington, NY 11743  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HUGO T. and MARY P. FISCHER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1968 through 1975.	:	

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Petitioners, Hugo T. and Mary P. Fischer, Box 89, Northport, New York 11768, 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 1969 through 1975 (File No. 26139).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 17, 1981 at 2:45 P.M. Petitioners appeared by Morris A. Kaplan, P.C. (Morris A. Kaplan, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether the petitioners were resident individuals of New York State during the years at issue.

II. If petitioners were not resident individuals of New York State, whether the petitioners had income from New York sources during the years at issue.

III. Whether petitioners are subject to penalties for failure to file New York State personal income tax returns and pay New York State personal income taxes for the years at issue.

FINDINGS OF FACT

1. Petitioners, Hugo T. and Mary P. Fischer, filed Federal income tax returns for the years at issue, but did not file New York State personal income tax returns for said years. Petitioners acted under the advice of a New York State certified public accountant.

2. On July 24, 1978 the Audit Division issued a Statement of Audit Changes against petitioners in the amount of \$44,501.39 in personal income tax, plus penalties and interest for the years 1968 through 1975. The proposed adjustment was based on a finding that petitioners were domiciled in and resident individuals of New York State during said years. The penalties were imposed for failure to file New York State income tax returns and to pay the tax when due.

3. On November 28, 1978 the Audit Division issued two notices of deficiency against petitioners based on the Statement of Audit Changes for the amount of tax and penalties set forth in the Statement plus interest to November 28, 1978.

4. Petitioner Hugo T. Fischer was born in Illinois. Petitioner Mary P. Fischer was born in Kentucky. They were married in 1943.

5. In 1947 Mr. Fischer became a distributor for the Wynn Oil Company. His territory encompassed New York and New England.

6. In 1953 petitioners moved to New York State.

7. In 1964 Wynn Oil Company decided to eliminate its distributors and Mr. Fischer's distributorship, a large and lucrative one, was the first to be eliminated.

8. Petitioners purchased an interest in a marine business, Northport Marine Center, Inc. Mr. Fischer was instrumental in the building up of an old

boat yard which the corporation acquired, but after completion of the construction phase, was not involved in the actual day-to-day operation of the business. He served on the board of directors of the corporation and, during the years at issue, was compensated by the corporation for his services as a director. Federal income taxes were withheld from his salary, but no New York State taxes were withheld.

9. Petitioners had visited Switzerland and believed it to be an excellent place to live and raise their three daughters. In or about 1965 or 1966 they decided to move there and start a new life.

10. Petitioners and their daughters, then age 14, 13 and 9, moved to Switzerland in August, 1967. They took all of their personal belongings to Switzerland, except for a few pieces of furniture which they kept in their house at Baycrest, Huntington, New York, which house they retained.

11. Petitioners rented a six bedroom house in Switzerland and bought new appliances, including a dishwasher, sewing machine, refrigerator and a television set. They planned to buy a smaller house when their daughters were out on their own. They also purchased and kept three horses while living in Switzerland. They had their automobile shipped to Switzerland when they moved there in 1967.

12. Petitioners had no intention of becoming Swiss citizens. They did, however, have the intention of living permanently in Switzerland.

13. Petitioners generally returned to the New York house each summer. One summer they remained in Switzerland. They did not rent out the house because although it was excellent for summer use, it was difficult to heat during the winter months. From time to time they permitted friends to use the house when they were not there.

14. Mr. Fischer also returned to New York occasionally for meetings of the board of directors of Northport Marine Center, Inc.

15. In 1971, there was a change in Swiss law or policy aimed at discouraging the residence of foreigners in Switzerland. Petitioners were told to leave the country. They retained Swiss attorneys and were able to postpone their departure several times, a year or two at a time, until July 1976, when they returned to New York.

16. Petitioners resided in Switzerland for almost nine years and left Switzerland against their will.

17. Petitioners paid Swiss income tax during their years of residence there. They also had Swiss drivers licenses.

18. Petitioners had independent income from investments and, except for Mr. Fischer's activities as a director of Northport Marine Center, Inc., were not employed or otherwise engaged in business during the years at issue. Petitioners made no effort to obtain employment while living in Switzerland.

19. Neither petitioner spent more than 183 days in New York in any of the years at issue.

20. Petitioners' eldest daughter married a Swiss national and resides in Switzerland.

#### CONCLUSIONS OF LAW

A. That petitioners, Hugo T. and Mary P. Fischer, changed their domicile from New York to Switzerland in August, 1967 and were not domiciled in New York during the years at issue.

B. That although petitioners maintained a permanent place of abode in New York (the house in Baycrest), neither petitioner spent, in the aggregate, more than 183 days of any of the taxable years at issue in this state. Accordingly,

they were not resident individuals of New York State during said years (section 605(a)(2) of the Tax Law).

C. That even though he was a nonresident, the income earned by petitioner Hugo T. Fischer as a director constituted income from New York sources under section 632(b) of the Tax Law and is subject to New York State personal income tax.

D. That petitioners had reasonable cause for failing to file New York State personal income tax returns and failing to pay New York State personal income tax. Accordingly, penalties under section 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled in full.

E. That the petition of Hugo T. and Mary P. Fischer is granted except as provided in Conclusion of Law "C" and the notices of deficiency are to be reduced accordingly.

DATED: Albany, New York

AUG 04 1982

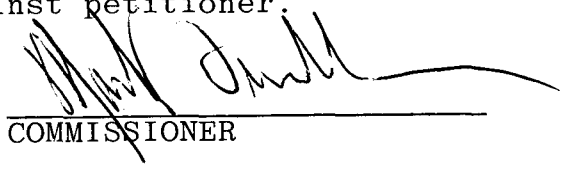
STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

I dissent. Petitioners remained domiciled in New York, even if they were non-residents for the taxable years in question. They kept their New York house and furniture, kept their U.S. citizenship, returned to New York each Summer, had employment in New York and none in Switzerland, and merely rented living space in Switzerland. I would find against petitioner.

  
COMMISSIONER