

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
H. Struve Hensel	:	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

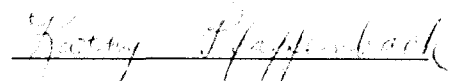
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon H. Struve Hensel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Struve Hensel  
5020 Overlook Rd. N.W.  
Washington, DC 20016

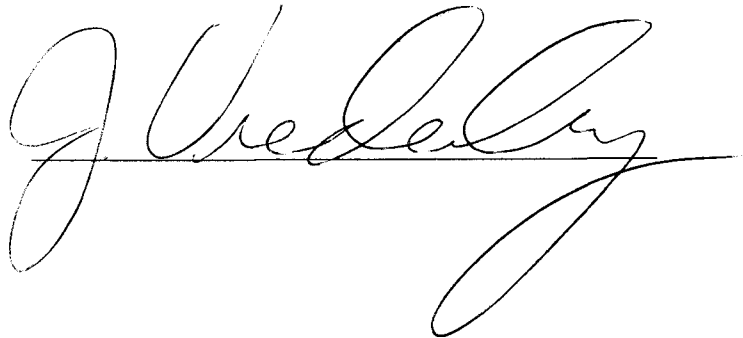
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
29th 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 :  
H. Struve Hensel :

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Guy P. Novo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Guy P. Novo  
Coudert Brothers  
200 Park Ave.  
New York, NY 10166

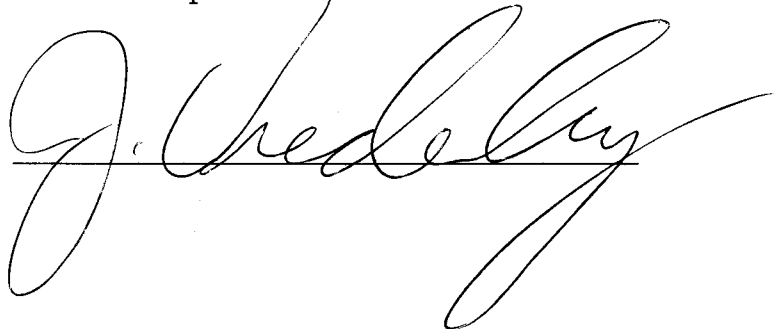
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
29th day of December, 1982.

*Kathy Pfaffenbach*

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 29, 1982

H. Struve Hensel  
5020 Overlook Rd. N.W.  
Washington, DC 20016

Dear Mr. Hensel:

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  
Guy P. Novo  
Coudert Brothers  
200 Park Ave.  
New York, NY 10166  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
H. STRUVE HENSEL : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax and New York City :  
Income Tax under Articles 22 and 30 of the Tax :  
Law for the Year 1976. :  
:

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Petitioner, H. Struve Hensel, 5020 Overlook Road, N.W., Washington, D.C. 20016, filed a petition for redetermination of a deficiency or for refund of personal income tax and New York City income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 28090).

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 December 16, 1981 at 10:45 A.M. Petitioner appeared by Coudert Brothers (Guy P. Novo, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUES

I. Whether petitioner was a domiciliary and resident individual of New York State during 1976.

II. Whether petitioner is entitled to certain itemized deductions for the year 1976.

FINDINGS OF FACT

1. Petitioner, H. Struve Hensel, filed a New York State Income Tax Nonresident Return on combined return form number 203/209 together with his wife Isabel S. Hensel for the year 1976. On the return, he indicated he was a resident of the State for 26 days. He reported New York income consisting of a

partnership distribution of \$25,804.00 plus additions of \$499.00 for unincorporated business tax and \$8,818.00 for a Keogh Plan distribution. The addition for the Keogh plan distribution however, while included in his New York reported income, was not listed on line 2 of the Federal amount column. The partnership distribution was from the New York City based law firm of Coudert Brothers. The return also indicated that petitioner had, for federal purposes, \$139,865.00 in salary income, plus interest, dividend, rent or royalty, and other income, none of which was reportable to New York.

Attached to the New York State return was City of New York Nonresident Earnings Tax Return reporting only the \$25,804.00 partnership distribution.

2. On August 31, 1979, the Audit Division issued to petitioner a Notice of Deficiency for additional tax due for the year 1976 in the amount of \$30,578.78, a section 685(c) penalty of \$158.33 for underestimation of personal income tax, plus interest. The deficiency was issued on the basis that petitioner had been a domiciliary of New York for 1976 and, since he failed to satisfy certain statutory conditions, was taxable as a resident on total income from all sources. The Keogh plan distribution was not included in calculating the deficiency.

3. Petitioner was born in Hoboken, New Jersey and as a child moved with his family to Tenafly, New Jersey where he lived until he went to Columbia Law School. Upon graduation from Columbia, he was employed by a New York City law firm. He lived and worked in New York City until December 1940 when he went to Washington, D.C. to work for the Navy Department. He became General Counsel of the Navy and later served as Assistant Secretary of the Navy during World War II. In March or April 1946 he moved back to New York City to become a partner in another New York City law firm.

4. In 1952, petitioner married his wife, Isabel S. Hensel. He was asked to return to Washington and become General Counsel to the Department of Defense. The Hensels moved to Washington and at first lived there in rented premises, but in 1953 or early 1954 purchased a house on Prospect Street, N.W.

5. In 1966, petitioner was offered an opportunity to become a partner in the New York City based, internationally known law firm of Coudert Brothers. Mrs. Hensel opposed the change because she wanted to remain in Washington. Petitioner nevertheless joined Coudert Brothers, promising his wife that he would stay only five years and they then would return to Washington. At that time Mr. Hensel was sixty-five years of age and did not believe he would be vigorous much beyond age seventy.

6. Petitioner commuted to New York City for a year, then in 1967 he and his wife sold their Washington home in order to raise the cash to purchase a cooperative apartment in New York City, since at that time banks generally were not providing financing to individuals for purchase of cooperative apartments. When they left Washington, Mr. and Mrs. Hensel had the intention of returning there when the five years expired.

7. The work at Coudert Brothers became interesting and Mr. Hensel stayed extending his relationship with the firm on a year-to-year basis. In 1972 the Hensels bought a home in Washington on Indian Lane in the Spring Valley section. They owned the house for about a year but decided that they did not want to move in because it was "rather dark", so they sold it.

8. Petitioner retired as a partner from Coudert Brothers effective December 31, 1975. While with the firm, he had done a considerable amount of legal work for Maritime Fruit Carriers, Ltd. ("Maritime"), a shipping firm based in London. During 1975, the suggestion was made that petitioner become president

of Maritime, but Mrs. Hensel's opposition and petitioner's gallbladder surgery resulted in petitioner not seriously considering it. In January 1976, the situation at Maritime became desperate and two of its directors approached petitioner about taking the presidency. Petitioner flew to London and Stockholm to evaluate the situation and agreed to accept the presidency for a year. He was elected president of the corporation on January 31, or February 1, 1976. In the first week in February, petitioner and his wife left for London where petitioner took up his duties for Maritime and they lived in a furnished apartment provided by Maritime.

9. In January 1976, petitioner and his wife had contracted to buy their present residence, 5020 Overlook Road, N.W., in Washington. They returned from Europe for a few days in April for the closing on the house. They rented the house to a tenant for a year. In May, petitioner was in Washington for a few days and stopped overnight in New York, where he changed planes. He stayed in the New York City apartment.

10. Petitioner and Mrs. Hensel had been trying to sell their New York City apartment without success since mid 1975. They did not rent out the apartment while they were in Europe. At the end of the first week in November 1976, petitioner and his wife returned to New York. They remained in the New York City apartment until mid December when they went to Florida. They returned to New York at the end of the first week of January 1977. They sold their New York City apartment in March 1977 and, after persuading their Washington tenants to move out early, moved into the Washington house after renovations were performed, in April 1977.

11. Petitioner and Mrs. Hensel were members of a golf club in Tuxedo, New York. Mr. Hensel was a member of a luncheon club in New York City. Their club

affiliations in the Washington D.C. area, however, were greater. Mr. Hensel's affiliations included the Chevy Chase Country Club, Metropolitan Club, City Tavern Club. Mrs. Hensel's affiliations included the City Tavern Club and the Sulgrave Club. Mrs. Hensel was also a member of the board of the Washington Home for Incurables before moving to New York City in 1967 and again after returning in 1977.

12. Mr. Hensel was a member of both the New York and Washington Bars. He was not a member of a bar association in New York. He did pay a fee for a bar association membership in Washington.

13. Petitioner and his wife own a cemetery plot in Christ Church, Virginia, just south of Washington.

14. Petitioner paid income taxes to the District of Columbia for 1966. He paid no income taxes to the District of Columbia for 1976. For 1967 through 1975 he filed New York resident income tax returns. For 1976 he filed a New York nonresident return.

15. Petitioner voted in New York in 1967 through 1975. In 1976 he did not vote. He was out of the country on election day and did not vote by absentee ballot.

16. Petitioner's New York State driver's license expired in April 1976. He then used his French license until he obtained a District of Columbia license.

17. Petitioner had bank accounts in New York and in Washington.

18. Petitioner spent 93 days in New York in 1976.

#### CONCLUSIONS OF LAW

A. That the New York City income tax imposed by Article 30 of the Tax Law is, by its own terms, to be administered by the State Tax Commission in the same manner as the personal income tax imposed by Article 22 of the Tax Law (section 1312 of Article 30 of the Tax Law).



B. That during the period at issue, the term "resident individual" was defined in section 605(a) of the Tax Law as follows:

"(a) Resident individual - A resident individual means an individual:

(1) who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in the armed forces of the United States during an induction period."

The term "city resident individual" is similarly defined in section 1305(a) of the Tax Law.

Since petitioner did not spend 183 days of 1976 in New York, he is a resident individual of New York State and New York City only if he is domiciled in New York and does not meet the other criteria in section 605(a)(1).

C. That petitioner was clearly domiciled in Washington at the time he joined Coudert Brothers in 1966 and is now domiciled there. The question is whether petitioner changed his domicile to New York in 1966 or thereafter and was thus domiciled in New York in 1976. Although petitioner retained some ties with Washington and intended to eventually return there, the factors pointing toward a New York domicile in 1976 cannot be ignored: Petitioner and his wife purchased a New York City apartment after selling their Washington home; he voted in New York; and had a New York drivers license. Moreover, petitioner admits that he paid no income taxes to the District of Columbia in 1976. It is noted that the District of Columbia income tax statute defines "resident" to include every individual domiciled in the District on the last day of the taxable

year (former section 47-1551c(s) D.C. Code). Accordingly, if petitioner was domiciled in Washington in 1976 he should have filed a District of Columbia tax return and paid taxes there as a resident.

It is hereby found that petitioner was domiciled in New York State and New York City in 1976. Accordingly, since he maintained a permanent place of abode in New York and spent more than thirty days in New York he was a resident individual of New York State and New York City within the meaning of sections 605(a) and 1305(a) of the Tax Law and is liable to taxation as such.<sup>(1)</sup>

D. That petitioner has requested that in the event he is found to be a domiciliary and resident individual of New York, that he be allowed itemized deductions of \$34,388.00, instead of the \$2,000.00 maximum standard deduction and that only \$54.00 of the dividend income of \$15,307.00 be included in his income, as the balance of the dividends were from stocks owned by Mrs. Hensel. This relief is granted. However, the Keogh plan distribution of \$8,818.00 which was not included in the deficiency must be included. The effect of this Conclusion of Law "D" thus will be a net adjustment of \$38,823.00.<sup>2</sup>

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(1) Although petitioner maintains that the burden of proof is on the Department to show that petitioner changed domicile from Washington to New York, the burden of proof is on petitioner. See section 689(e) of the Tax Law.

(2) Since no notice of deficiency was issued against Mrs. Hensel and since the dividend income was disclosed on the return, the three year limitation on assessment would apply against her (section 683(d) of the Tax Law).

E. That except as provided in Conclusion of Law "D", the petition of H. Struve Hensel is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER