

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Harriet Holstein :  
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 :  
1974 & 1975. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

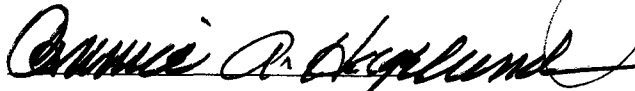
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Harriet Holstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harriet Holstein  
500 A. East 87th St.  
New York, NY 10028

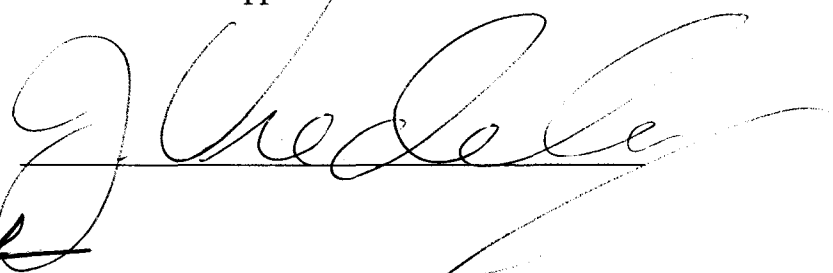
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
22nd day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Harriet Holstein :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
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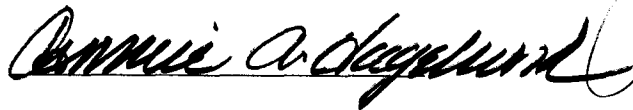
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Stuart Kessler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stuart Kessler  
Goldstein, Golub, Kessler & Co.  
245 Park Ave.  
New York, NY 10167

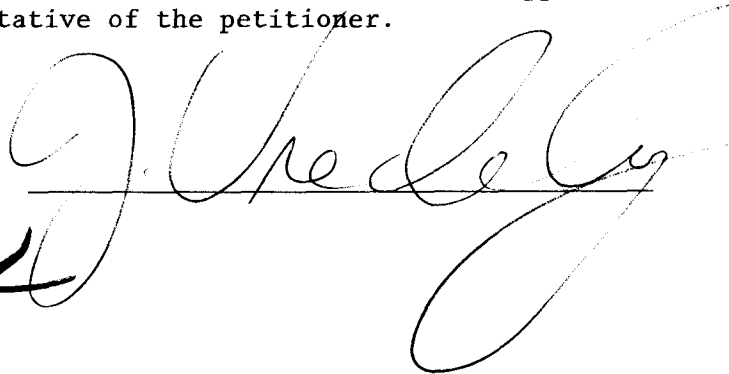
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
22nd day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

October 22, 1982

Harriet Holstein  
500 A. East 87th St.  
New York, NY 10028

Dear Ms. Holstein:

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  
Stuart Kessler  
Goldstein, Golub, Kessler & Co.  
245 Park Ave.  
New York, NY 10167  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
HARRIET HOLSTEIN  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Years 1974 and 1975.

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DECISION

Petitioner, Harriet Holstein, 500 A. East 87th Street, New York, New York 10028, 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 1974 and 1975 (File No. 24361).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 22, 1981 at 1:15 P.M. Petitioner appeared with Stuart Kessler, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency, as it relates to taxable year 1974, is barred by the three-year period of limitations on assessment.

II. Whether petitioner was domiciled in, and a resident of New York State for the entire taxable years 1974 and 1975.

FINDINGS OF FACT

1. For taxable year 1974, petitioner alleged to have timely filed a New York State Income Tax Resident Return. An undated "copy" of such return was received by the Audit Division on November 16, 1976. Pursuant to such copy, petitioner claimed to have been a New York State resident for said year only

for the period January 1 through June 30, 1974. For taxable year 1975 petitioner timely filed a New York State Income Tax Resident Return whereon only a portion of her Federal adjusted gross income was reported.

2. On April 19, 1978, the Audit Division issued a Statement of Audit Changes to petitioner wherein, as a result of her failure to submit requested information, her tax liabilities were recomputed on the basis that she was a resident of the State of New York for both full taxable years at issue. Accordingly, a Notice of Deficiency was issued against petitioner on July 10, 1978 asserting additional personal income tax of \$3,811.29, penalty of \$385.89 pursuant to section 685(a)(1) of the Tax Law for failure to file a 1974 return, plus interest of \$855.44, for a total due of \$5,052.62.

3. Petitioner argued that she was a domiciliary and resident of England for the sixteen (16) month period July 1, 1974 through October 31, 1975. Additionally, she argued that the deficiency asserted for 1974 should be cancelled on the ground that she had filed her 1974 return on April 12, 1975, thereby rendering the Notice of Deficiency issued July 10, 1978, with respect to said year, untimely pursuant to section 683(a) of the Tax Law.

4. The record herein contains no documentation supporting petitioner's contention that she had timely filed a 1974 return. The only 1974 return on record is the aforestated undated "copy" which was received November 16, 1976, as the result of an inquiry. The Audit Division views said "copy" as the initial and sole filing for 1974.

5. On or about July 1, 1974 petitioner was assigned to England by her New York State employer. Such assignment was to be for a minimum period of six months. On her removal from New York State petitioner sublet her furnished apartment located at 500 A. East 87th Street, New York City.

6. On arrival in England, petitioner leased an apartment for a period of six months. Subsequently, such lease was renewed for another six month period and ultimately, toward the end of petitioner's stay, it was leased on a monthly basis.

7. Petitioner obtained a work permit in England.

8. On or about October 31, 1975 petitioner's assignment in England terminated and she was then reassigned to New York. At this time she terminated the sublease and resumed residing in her New York apartment.

9. Petitioner averred that her intent on moving to England was not to remain there permanently.

#### CONCLUSIONS OF LAW

A. That section 683(a) of the Tax Law provides that:

"Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed)."

B. That petitioner has failed to sustain her burden of proof required pursuant to section 689(e) of the Tax Law to show that she had filed a New York State personal income tax return for taxable year 1974 prior to November 16, 1976. Accordingly, the Notice of Deficiency issued July 10, 1978 with respect to said year was timely.

C. That a domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time (20 NYCRR 102.2(d)(2))

The evidence is clear and convincing that petitioner had no intention of making her fixed and permanent home in England. Accordingly, she remained a

domiciliary of the State of New York during the full taxable years 1974 and 1975.

D. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b), Section 605(a)(1) of the Tax Law).

Since petitioner had not satisfied the above stated requirements for taxable years 1974 and 1975 she is therefore deemed a resident of the State of New York for said years.

E. That the petition of Harriet Holstein is denied and the Notice of Deficiency dated July 10, 1978 is hereby sustained.

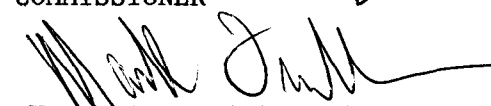
DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

October 22, 1982

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Albany, New York 12227  
Phone # (518) 457-2070

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STATE TAX COMMISSION

cc: Petitioner's Representative  
Stuart Kessler  
Goldstein, Golub, Kessler & Co.  
245 Park Ave.  
New York, NY 10167  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
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HARRIET HOLSTEIN  
for Redetermination of a Deficiency or for  
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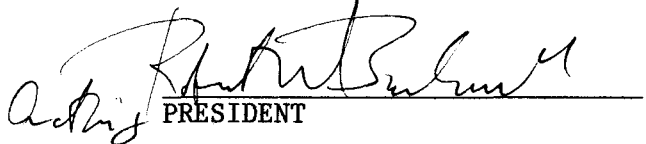
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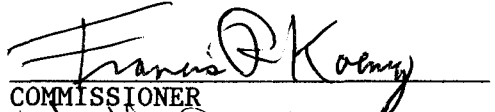
E. That the petition of Harriet Holstein is denied and the Notice of Deficiency dated July 10, 1978 is hereby sustained.

DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

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11-5-72  
11-11-72

X

Harriet Holstein  
500 A. East 87th St.  
New York, NY 10028

NAW  
10/15/82

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MAIL