

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sheldon & Helen Lehrer :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Years 1970 & 1971. :  
\_\_\_\_\_:

AFFIDAVIT OF MAILING

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 Sheldon & Helen Lehrer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sheldon & Helen Lehrer  
7246 Eton Ave.  
Canoga Park, CA 91303

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

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In the Matter of the Petition :  
of :  
Sheldon & Helen Lehrer :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law :  
for the Years 1970 & 1971 :  
\_\_\_\_\_ :

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 Alvin Ulman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alvin Ulman  
Two Penn Plaza, Rm. 1240  
New York, NY 10001

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  
9th day of April, 1982.

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

April 9, 1982

Sheldon & Helen Lehrer  
7246 Eton Ave.  
Canoga Park, CA 91303

Dear Mr. & Mrs. Lehrer:

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 & 722 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  
Alvin Ulman  
Two Penn Plaza, Rm. 1240  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SHELDON LEHRER AND HELEN LEHRER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Years 1970 and 1971.	:	

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Petitioners, Sheldon Lehrer and Helen Lehrer, 7246 Eton Avenue, Canoga Park, California 91303, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 and 1971 (File Nos. 13277 and 13278).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 7, 1981 at 9:15 A.M. Petitioners appeared by Alvin Ulman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether petitioners were domiciliaries of New York State.
- II. Whether the Audit Division properly computed petitioners' income and unincorporated business taxes.

FINDINGS OF FACT

1. On April 12, 1974, the Audit Division issued a Notice of Deficiency against Sheldon Lehrer and Helen Lehrer imposing additional personal income taxes in the amounts of \$3,503.49, plus interest, for 1970 and \$3,940.82, plus interest, for 1971, on the grounds that information on file indicated that they

were New York State residents and that they were taxable on income from all sources, plus or minus modifications. On the same date a second Notice of Deficiency was issued against Sheldon Lehrer for \$563.26 in unincorporated business tax for 1970 and \$1,055.61 in unincorporated business tax for 1971, plus interest.

2. Petitioners filed New York State income tax resident returns for 1970 and 1971. They listed their home address as 142 East 16th Street, New York, New York 10003. This was an apartment maintained by petitioners. A notation on an attached sheet which accompanied the return stated "Taxpayer is resident of both New York and California and spends one-half of his time in each State. Therefore, his income has been divided equally". Sheldon Lehrer also filed New York State unincorporated business tax returns for 1970 and 1971 in which he allocated half of his business income from the federal return as net profit from business and calculated his tax therefrom. Petitioners also filed California individual income tax returns for the years in issue in which they listed 142 East 16th Street, New York, New York, as their address and petitioner Sheldon Lehrer's employer as Atlantic Optical Co., Inc., 20 East 17th Street, New York, New York.

3. Petitioner Sheldon Lehrer owned stock in the New York corporation, Atlantic Optical Co., Inc., which sold optical frames. Petitioner Sheldon Lehrer alleged that he was engaged in the wholesale business of selling lenses through his California licensed company "Sheldon Lehrer", a sole proprietorship, which was established in 1963 or 1964 at 1154 North Western Avenue, Los Angeles, California.

4. Petitioners alleged that they moved to California in 1965. In 1967 they purchased a home at 4819 Bruges Avenue, Woodland Hills, California and in

July, 1972 sold their home and purchased another home in Los Angeles, California. Sheldon Lehrer had a seller's permit from the California State Board of Equalization dated November, 1969 which permitted him to engage in the business of selling tangible personal property at 4819 Bruges Avenue, Woodland Hills, California. Said property was insured in California. Sheldon Lehrer also did business in Mexico, and in Central and South America.

5. At the hearing, petitioners' representative submitted amended New York State income tax nonresident returns for 1970 and 1971, together with amended unincorporated business tax returns for said years. Allocation of business income and expenses to New York State for each year resulted in the computation of overpayments and requested refunds.

6. Petitioners offered no documentary or other substantial evidence to show that Mr. Lehrer had a regular place of business outside New York State. They also failed to substantiate the basis upon which income and expenses were allocated to New York State. Petitioners alleged that the books and records were destroyed in a fire.

#### CONCLUSIONS OF LAW

A. That petitioners Sheldon Lehrer and Helen Lehrer failed to sustain their burden of proof imposed by section 689(e) of the Tax Law to show that during the years at issue, they had abandoned their New York domicile and established a bonafide residence in the State of California. That petitioners also failed to sustain their burden of proof to show that they did not spend more than 30 days in New York State during 1970 and 1971. Therefore, petitioners Sheldon Lehrer and Helen Lehrer were resident individuals of New York State within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

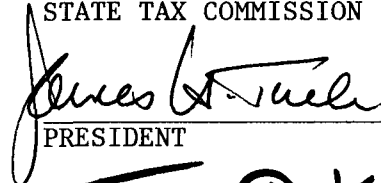
B. That section 707(a) of the Tax Law provides in part that "If an unincorporated business is carried on both within and without this state... there shall be allocated to this state a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions. If the unincorporated business has no regular place of business outside this state, all such excess shall be allocated to this state". Section 707(b) of the Tax Law provides that "The portion allocable to this state may be determined from the books of the business". Therefore, in view of the fact that no books or records were presented which showed an allocation of business income and expenses and there was no proof of a regular place of business without the state, no allocation is permissible.

C. That the petition of Sheldon Lehrer and Helen Lehrer is denied and the notices of deficiency issued April 12, 1974 are sustained.

DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER