

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Richard and Judith Stockton : 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

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 Richard and Judith Stockton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard and Judith Stockton  
287 Wistwood Ave.  
Longbranch, NJ 07740

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.

*Connie A. [Signature]*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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

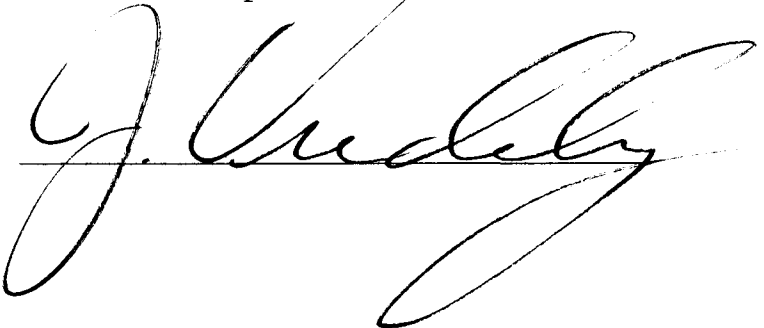
Seymour Reitknecht  
575 Madison Avenue  
New York, NY 10022

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.

  
Commissioner of Taxation and Finance



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

August 4, 1982

Richard and Judith Stockton  
287 Wistwood Ave.  
Longbranch, NJ 07740

Dear Mr. & Mrs. Stockton:

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  
Seymour Reitknecht  
575 Madison Avenue  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
RICHARD AND JUDITH STOCKTON  
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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DECISION

Petitioners, Richard and Judith Stockton, 287 Wistwood Avenue, Longbranch, New Jersey 07740, 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. 23372).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 24, 1981 at 10:45 A.M. Petitioner appeared by Seymour Reitknecht, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether petitioners were "resident individuals" of New York State during 1974 within the meaning and intent of section 605(a) of the Tax Law.

II. Whether the Audit Division took into account the correct amount of expenses incurred by Mr. Stockton in earning his income in Pennsylvania.

III. Whether the Audit Division has sustained its burden of proof of asserting an increase in a deficiency of personal income tax due at the Formal Hearing based upon unreported dividend and interest income.

FINDINGS OF FACT

1. Petitioners, Richard Stockton and Judith Stockton, filed a joint New York State Income Tax Resident Return for 1974. On this return petitioners reported a total New York income of \$27,187.79, which amount represented wages paid to Judith Stockton, and total itemized deductions of \$3,092.82. Petitioners listed their address on their return as 325 East 41st Street, New York City.
2. Richard Stockton filed an Individual Income Tax Return with the Commonwealth of Pennsylvania for 1974. On this return Mr. Stockton filed as a resident of Pennsylvania and reported his address as 325 East 41st Street, New York City, which was the address shown on his New York State tax return. Mr. Stockton reported \$43,383.26 as his Pennsylvania taxable income.
3. Petitioners filed a U.S. Individual Income Tax Return for 1974 which listed their address as 325 East 41st Street, New York City. On this return petitioners reported their total income less adjustments to income as \$70,997.04. Petitioners also reported itemized deductions of \$9,208.50.
4. On August 9, 1977 the Audit Division issued a Statement of Audit Changes on the ground that departure from New York for a temporary and limited period of employment does not constitute a permanent change of residence. The Statement of Audit Changes also imposed a negligence penalty of 5 percent pursuant to Tax Law §685(b) and allowed a credit for tax paid to the Commonwealth of Pennsylvania. On April 12, 1978 the Audit Division issued a Notice of Deficiency of \$5,486.30 plus penalty and interest of \$1,668.19 for a total of \$7,154.49.
5. Petitioner Richard Stockton was born in New Jersey.
6. In 1963 Mr. Stockton moved to New York State. Mr. Stockton had lived in Singapore and Japan prior to this move.

7. Mr. and Mrs. Stockton were married in July, 1972. Following their marriage they lived in the Beaux Arts Hotel in New York City.

8. In October, 1972 Mr. and Mrs. Stockton moved to Tudor City in Manhattan. On December 1, 1972 Mr. Stockton signed a one year lease on the apartment.

9. Early in 1973, and for several years previously, Mr. Stockton was employed by Eastern Airlines as Assistant Treasurer.

10. On February 3, 1973 Mr. Stockton became the Vice-President of Finance and Chief Financial Officer of Piper Aircraft ("Piper"). Mr. Stockton accepted the new position with Piper because of the greater responsibility. Mr. Stockton's duties with Piper included arranging the financing for the company, advising the Board of Directors of the financial affairs of the company, managing the financial staff of the company, and preparing financial statements and tax returns.

11. Mr. Stockton did not have a written employment contract with Piper. However, there was an oral agreement as to what his duties were.

12. Piper's headquarters were located in Lock Haven, Pennsylvania.

13. It was a condition of Mr. Stockton's employment that he become a resident of Lock Haven, Pennsylvania or the surrounding area in order to respond, as required, to Piper's needs. The President and Chief Executive Officer of Piper anticipated that, at the time Mr. Stockton began his employment, Mr. Stockton would continue at Piper for the remainder of his career.

14. In 1973, while employed by Piper, Mr. Stockton obtained life insurance from the Continental American Life Insurance Company of Wilmington, Delaware. Payment for the life insurance was made by an automatic deduction from Mr. Stockton's payroll check.

15. On or about February 1, 1973 Mr. and Mrs. Stockton moved to the Fallon Hotel and Motel ("Fallon Hotel") in Lock Haven, Pennsylvania. Mr. Stockton received \$1,000.00 from Piper to relocate in Pennsylvania. When Mr. and Mrs. Stockton moved to Pennsylvania they brought only those items which would be used on a daily basis, such as clothing. The accommodations available in Pennsylvania did not have space available for furniture. Petitioners stayed at the Fallon Hotel until May 1973.

16. When Mr. and Mrs. Stockton first went to Lock Haven, Pennsylvania the area was recovering from the devastation of a hurricane. Houses or apartments were not available for rent in the immediate area.

17. On or about May, 1973 Mr. Stockton rented a furnished house in Jersey Shore, Pennsylvania. This house, which rented for \$300.00 a month plus utilities pursuant to a one year lease, was located about thirty miles from Lock Haven. Richard Stockton's landlord wanted the house back when the lease period on the house expired. Therefore, in May or June, 1974 Richard Stockton moved back to the Fallon Hotel.

18. Mr. Stockton's accommodations at the Fallon Hotel in 1974 consisted of a large room with a balcony and small kitchen area containing a stove and refrigerator. Mr. Stockton paid \$150.00 to \$200.00 a week for the living quarters.

19. In May, 1973 Mrs. Stockton moved back to petitioners' apartment in Tudor City in order to resume her career as a business executive. After Mrs. Stockton moved back to New York City, Mr. and Mrs. Stockton visited each other regularly. Usually Mrs. Stockton went to Pennsylvania and stayed at the rented home in Jersey Shore. On occasion, Mr. Stockton would visit Mrs. Stockton in New York City and stay at the apartment in Tudor City.

20. Mrs. Stockton continued to live at the apartment at Tudor City following the expiration of their lease. Mrs. Stockton payed rent on the apartment on a monthly basis. In November, 1974 Mr. Stockton obtained a new lease on this apartment.

21. Mr. Stockton's position with Piper required that he travel to Vero Beach, Florida, Lakeland, Florida, Pittsburgh, Pennsylvania, and New York City, New York. Mr. Stockton would go to New York City for meetings with the Board of Directors, shareholders, managers, and insurance brokers. Piper would reimburse Mr. Stockton's travel expenses for meals, cabs and use of the telephone. Travel was usually provided by one of Piper's airplanes. In 1974 petitioner spent a total of 140 days in New York City.

22. In October of 1975 Mr. Stockton terminated his employment with Piper. Thereafter Mr. Stockton sought employment everywhere. However, at this time Mr. Stockton moved back to the same apartment at Tudor City.

23. In the fall of 1975 Mr. Stockton considered purchasing a house in Atlantic Highlands, New Jersey. Mr. Stockton did not purchase this house because one aspect of the financing became unavailable.

24. In 1972 Mr. Stockton was licensed to drive a vehicle in New Jersey.

25. In 1973 Mr. Stockton's driver's license was from the Commonwealth of Pennsylvania.

26. In January, 1973 Mr. Stockton purchased a Mercedes Benz and registered it in Pennsylvania.

27. In 1974 Mr. Stockton was not a member of any private social clubs. He was also not affiliated with any religious group.

28. Mr. Stockton did not vote or register to vote in 1974.



29. Mr. Stockton did not have a bank account in Pennsylvania. He had always done his banking in New York City.

30. While residing in Pennsylvania, Mr. Stockton continued to receive some mail at the apartment in Tudor City.

31. When Mr. Stockton moved from New York City to Pennsylvania he did not notify the utility company, post office, or telephone company of the change of address.

32. At the hearing the Audit Division contended that a greater deficiency should be asserted since dividend and interest income were not reported on the New York income tax return.

#### CONCLUSIONS OF LAW

A. That Tax Law §605(a) defines a resident individual as an individual "...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..."

B. That during the period July, 1972 through February 1, 1973 petitioners were domiciliaries of New York and during the period February 1, 1973 through December 31, 1974 Mr. Stockton remained a domiciliary of New York. That once a domicile is established it continues until the person moves to a new location with the bona fide intention of making his new location his fixed and permanent home (20 NYCRR 102.2(d)(2)). That in view of the facts: that Mr. Stockton held an apartment in New York City in his name during the period in issue; that Mr. Stockton did not notify the post office, telephone company, or utility company of his change of address; that Mr. Stockton continued to receive some mail at

his New York City address; that Mr. Stockton listed New York City as his address on his Pennsylvania, New York, and Federal income tax returns for 1974; and that Mr. Stockton continued to do all his banking in New York City, Mr. Stockton has failed to establish that he intended to make Pennsylvania his fixed and permanent home.

C. That Mr. Stockton maintained a permanent place of abode in New York during the entire year 1974.

D. That New York taxable income of a resident individual is the New York adjusted gross income less applicable New York deductions and personal exemptions (Tax Law §611[a]).

E. That Tax Law §612(a) provides that "The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined by the laws of the United States for the taxable year, with the modifications specified in this section".

F. That the Audit Division erred in failing to take into account petitioners' total federal itemized deductions in determining their New York taxable income.

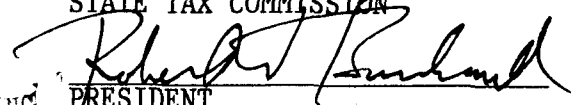
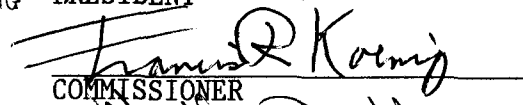

G. That the Notice of Deficiency included an adjustment for the amount of interest and dividend income reported on petitioner's Federal income tax return; therefore, the Audit Division's claim for a greater deficiency is denied.

H. That petitioners' conduct was not negligent within the meaning of Tax Law §685(b) and therefore, the penalty imposed was improper and is hereby cancelled.

I. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 12, 1978 to the extent shown in Conclusions of Law "F" and "H" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION  
  
ACTING PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER