

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Donald F. Hepburn	:	
for Redetermination of a Deficiency or for Refund	:	AFFIDAVIT OF MAILING
of Personal Income Taxes under Article 22 of the	:	
Tax Law and Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Donald F. Hepburn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald F. Hepburn
Box 25421
Awali, BAHRAIN

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
28th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald F. Hepburn :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Article 22 of the :
Tax Law and Chapter 46, Title U of the :
Administrative Code of the City of New York for :
the Year 1977. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Howard O. LeShaw the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard O. LeShaw
306 W. 38th St., Rm. 1503
New York, NY 10018

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
28th day of September, 1983.

Susan Powell

Connie O. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

September 28, 1983

Donald F. Hepburn
Box 25421
Awali, BAHRAIN

Dear Mr. Hepburn:

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 and Chapter 46, Title U of the Administrative Code of the City of New York, 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard O. LeShaw
306 W. 38th St., Rm. 1503
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD F. HEPBURN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law and Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioner, Donald F. Hepburn, Box 25421, Awali, Bahrain, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York for the year 1977 (File No. 31037).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1983 at 9:25 A.M. Petitioner appeared by Howard O. LeShaw, P.A. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUES

I. Whether petitioner was a New York resident during the entire 1977 taxable year.

II. Whether petitioner may deduct from his New York taxable income a pro-rata share of the annual exclusion provided by I.R.C. §911 of \$15,000 for income earned abroad.

FINDINGS OF FACT

1. Petitioner, Donald F. Hepburn, and his wife jointly filed a Form IT-201/208, New York State Income Tax Resident Return, for 1977 and reported

"New York taxable income" of \$18,683. They also filed a Form NYC-203, Nonresident Earnings Tax Return for New York City, on which they reported a New York City earnings tax of \$107.35. Attached to their returns was a Form CR-60.1, Schedule for Change of Resident Status, showing that they were New York residents for only part of the year at issue, from January 1, 1977 to June 25, 1977.

2. On November 29, 1979, the Audit Division issued a Statement of Audit Changes against petitioner and his wife showing additional personal income tax due of \$3,154.31 plus penalty and interest computed as follows:

	<u>STATE</u>	<u>CITY</u>
New York income as corrected	\$53,343.00 ¹	
Itemized deductions	4,428.00	
Balance	<u>48,915.00</u>	
Exemptions (5)	3,250.00	
New York taxable income	<u>\$45,665.00</u>	
Tax per tax rate schedule	\$ 5,159.75	
City nonresident tax		\$ 107.35
New York tax withheld	<u>\$ 2,001.39</u>	111.40
Underpayment	<u>\$ 3,158.36</u>	
Overpayment		\$ (4.05)
Personal Income Tax Due		3,154.31
Section 685(a)(1) & (a)(2) Penalty		788.58
Interest		<u>435.61</u>
Total Due		<u>\$4,378.50</u>

The following explanation was provided by the Audit Division to support its claim of tax due from petitioner:

"A domiciliary of New York State who goes abroad for reasons of employment does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return.

He is taxable as a resident unless he fulfills all three of the following conditions:

1. Maintained no permanent place of abode in New York State during the taxable year;

¹ This amount was reported by petitioner on his United States Form 1040 as his adjusted gross income.

2. Did maintain a permanent place of abode outside New York State during the entire taxable year; and
3. Was in New York State for an aggregate period of not more than 30 days during such year.

Since you did not meet the above conditions for 1977, you are taxable on the same income as that reported for Federal tax purposes."

3. On May 21, 1980, the Audit Division issued a Notice of Deficiency against petitioner alleging a personal income tax deficiency of \$3,154.31 plus penalty and interest. A copy of the Statement of Audit Changes described in Finding of Fact "2", supra, was attached to the Notice.

4. Petitioner conceded at the hearing, herein, that he was a resident of New York for New York personal income tax purposes during the entire 1977 taxable year. In addition, the parties' representatives proposed that petitioner be "allowed to exclude a pro-rata share of the annual exclusion of \$15,000 (for income earned abroad), or \$7,500."

5. Attached to petitioner's United States Form 1040 for 1977 is a Form 2555, Exemption of Income Earned Abroad. On such form, petitioner reported "total earned income from sources outside the U.S." of \$47,612 from which he claimed an exemption of \$10,356 for income earned abroad under I.R.C. §911 leaving a balance of \$37,256. Petitioner reported on his 1977 United States Form 1040, line 8, \$62,111² as his "wages, salaries, tips, and other employee compensation" which reflects this exemption of \$10,356. Therefore, his federal adjusted gross income also reflects such exemption under I.R.C. §911.

² This amount is the sum of \$37,256 and \$24,855, the amount originally reported by petitioner as his wages earned during his New York resident period.

6. Petitioner was born and raised in Australia. He received a degree in Mechanical Engineering from Perth (Australia) Technical College. After obtaining his degree, he was employed by Caltex - The Bahrain Petroleum Company and has remained with this company to date.

7. Petitioner's employment record with Caltex - The Bahrain Petroleum Company is as follows:

1955	-	Bahrain
01/62-12/62	-	England
12/62-05/67	-	Bahrain
05/67-07/70	-	India
07/70-06/77	-	New York
06/77-present	-	Bahrain

8. Petitioner and his wife, Roma Hepburn, are American citizens and maintained a house at 90 Southdown Road, Huntington, New York during the year at issue.

CONCLUSIONS OF LAW


A. That pursuant to Finding of Fact "4", herein, the Audit Division properly treated petitioner as a resident for New York personal income tax purposes during the entire 1977 taxable year.

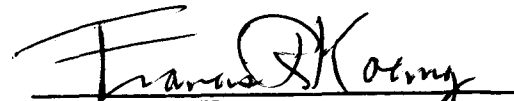
B. That the starting point for the determination of a New York resident's New York personal income tax liability is his federal adjusted gross income. Therefore, it is not necessary to allow petitioner a deduction from New York taxable income for a pro-rata share of the annual exclusion of \$15,000 for income earned abroad as proposed by the parties. As noted in Finding of Fact "5", herein, petitioner claimed an exemption under I.R.C. §911 for income earned abroad on his federal return for 1977 which entered into the calculation of his federal adjusted gross income.

C. That the petition of Donald F. Hepburn is denied.

DATED: Albany, New York
SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER