

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Washington I. Van Der Poel :  
Eleanor D. Martin, Guardian :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1970.

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Harry B. Daub, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry B. Daub  
4 Park Ave.  
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 March, 1984.

David Parchuck

James A. Highland  
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  
Washington I. Van Der Poel  
Eleanor D. Martin, Guardian : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
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Tax under Article 22 of the Tax Law for the Year :  
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State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Washington I. Van Der Poel, Eleanor D. Martin, Guardian the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Washington I. Van Der Poel  
Eleanor D. Martin, Guardian  
510 Dickinson  
Missoula, MO 59801

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 March, 1984.

David Parchuck

James A. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law Section 174

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

March 9, 1984

Washington I. Van Der Poel  
Eleanor D. Martin, Guardian  
510 Dickinson  
Missoula, MO 59801

Dear Mr. Van Der Poel:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Harry B. Daub  
4 Park Ave.  
New York, NY  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
WASHINGTON I. VAN DER POEL, III : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1970. :

On April 5, 1979, petitioner, Washington I. Van der Poel, III, informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and submit the case to the State Tax Commission, based on the entire record contained in the file.

Whether petitioner was a "nonresident individual" within the meaning of section 605 of the Tax Law for the year 1970.

1. Petitioner, Washington I. Van der Poel, III, timely filed a New York State income tax nonresident return for the year 1970. On this return, he reported no New York State taxable income.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes on the grounds that a member of the Armed Forces who is domiciled in New York State at the time of entering the military service is considered a

resident for New York State income tax purposes for each year in which he does not satisfy all three of the following conditions:

1. He had no permanent place of abode in New York State during the entire taxable year, and
2. He did maintain a permanent place of abode outside New York State during the entire taxable year, and
3. He did not spend more than 30 days in New York State during the taxable year.

The Income Tax Bureau concluded that petitioner did not show that he satisfied all three of the above conditions for the taxable year 1970. Therefore he was considered a resident for New York State income tax purposes and, as such, was subject to New York State personal income tax on all income received, regardless of source. Accordingly, it issued a Notice of Deficiency on May 21, 1973 for the year 1970 in the amount of \$420.40 in personal income tax, plus interest of \$52.96, for a total of \$473.36.

3. Petitioner was a domiciliary of New York State at the time of his induction into the United States Air Force. He was assigned to two different duty stations during 1970. From January 1, 1970 through June 24, 1970, petitioner was stationed at Reese Air Force Base, Texas. During this period he occupied a partially furnished three room apartment in the Bachelor Officer Quarters at Reese Air Force Base. Rent payments were made through the withholding of a quarters allowance from petitioner's paycheck. Maintenance requirements included cleaning and minor repairs characteristic of most civilian apartments were performed by petitioner.

4. From June 28 to December 31, 1970, petitioner was stationed at Keesler Air Force Base, and maintained off base residence at Oakwood Apartments, West

Beach, Biloxi, Mississippi. The apartment had three partially furnished rooms and required cleaning and minor maintenance. Petitioner paid the rent for this apartment by personal check.

5. At both locations, petitioner did his own cooking, and used the address to receive mail, register his personal automobile and for insurance and credit purposes.

6. Since September of 1969, petitioner has not maintained a permanent place of abode within New York State and spent less than 30 days within New York State (December 20, 1970 to December 31, 1970) during the taxable year 1970.

#### CONCLUSIONS OF LAW

A. That a permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him and will generally include a dwelling place owned or leased by his or her spouse [20 NYCRR 102.2(e)]. The quarters occupied by petitioner during the year constituted a permanent place of abode, since each apartment had the indicia needed (see Findings of Fact "3", "4" and "5") for each residence to be permanent in nature within the meaning of 20 NYCRR 102.2(e).

B. That the petitioner, Washington I. Van der Poel, III, was domiciled in New York State during 1970 and he did maintain a permanent place of abode outside New York State during the entire year. Accordingly, petitioner was not a resident of New York State during 1970, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

C. That the petition of Washington I. Van der Poel, III is granted and the Notice of Deficiency issued May 21, 1973 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984

Rodica Owlen  
PRESIDENT

Francis R. Koelg  
COMMISSIONER

Mark Smith  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  3/20/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition S.C. - Dec - 3/9/84
Name Harry B. Daub	T/P Washington & V. D. Fred.
Address 4 Park Ave. New York, N.Y.	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Reps Copy

Searched by D.P.	Section	Date of Search 3/20/84
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER



TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

CLAIM CHECK  
NO. 5

☐ HOLD

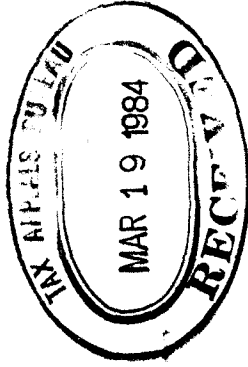
DATE

1ST NOTICE

2ND NOTICE

RETURN

Harry B. Daub  
4 Park Ave.  
New York, NY



Date  
PS  
Oct

**CERTIFIED**

P 470 315 300

**MAIL**



*hp*

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

March 9, 1984

Washington I. Van Der Poel  
Eleanor D. Martin, Guardian  
510 Dickinson  
Missoula, MO 59801

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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  
Harry B. Daub  
4 Park Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WASHINGTON I. VAN DER POEL, III	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1970.	:	

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Petitioner, Washington I. Van der Poel, III, 510 Dickinson, Missoula, Montana 59801, has 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 1970 (File No. 13737).

On April 5, 1979, petitioner, Washington I. Van der Poel, III, informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner was a "nonresident individual" within the meaning of section 605 of the Tax Law for the year 1970.

FINDINGS OF FACT

1. Petitioner, Washington I. Van der Poel, III, timely filed a New York State income tax nonresident return for the year 1970. On this return, he reported no New York State taxable income.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes on the grounds that a member of the Armed Forces who is domiciled in New York State at the time of entering the military service is considered a

resident for New York State income tax purposes for each year in which he does not satisfy all three of the following conditions:

1. He had no permanent place of abode in New York State during the entire taxable year, and
2. He did maintain a permanent place of abode outside New York State during the entire taxable year, and
3. He did not spend more than 30 days in New York State during the taxable year.

The Income Tax Bureau concluded that petitioner did not show that he satisfied all three of the above conditions for the taxable year 1970. Therefore he was considered a resident for New York State income tax purposes and, as such, was subject to New York State personal income tax on all income received, regardless of source. Accordingly, it issued a Notice of Deficiency on May 21, 1973 for the year 1970 in the amount of \$420.40 in personal income tax, plus interest of \$52.96, for a total of \$473.36.

3. Petitioner was a domiciliary of New York State at the time of his induction into the United States Air Force. He was assigned to two different duty stations during 1970. From January 1, 1970 through June 24, 1970, petitioner was stationed at Reese Air Force Base, Texas. During this period he occupied a partially furnished three room apartment in the Bachelor Officer Quarters at Reese Air Force Base. Rent payments were made through the withholding of a quarters allowance from petitioner's paycheck. Maintenance requirements included cleaning and minor repairs characteristic of most civilian apartments were performed by petitioner.

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5. At both locations, petitioner did his own cooking, and used the address to receive mail, register his personal automobile and for insurance and credit purposes.

6. Since September of 1969, petitioner has not maintained a permanent place of abode within New York State and spent less than 30 days within New York State (December 20, 1970 to December 31, 1970) during the taxable year 1970.

#### CONCLUSIONS OF LAW

A. That a permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him and will generally include a dwelling place owned or leased by his or her spouse [20 NYCRR 102.2(e)]. The quarters occupied by petitioner during the year constituted a permanent place of abode, since each apartment had the indicia needed (see Findings of Fact "3", "4" and "5") for each residence to be permanent in nature within the meaning of 20 NYCRR 102.2(e).

B. That the petitioner, Washington I. Van der Poel, III, was domiciled in New York State during 1970 and he did maintain a permanent place of abode outside New York State during the entire year. Accordingly, petitioner was not a resident of New York State during 1970, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

C. That the petition of Washington I. Van der Poel, III is granted and the Notice of Deficiency issued May 21, 1973 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984

Rodrick Asclun  
PRESIDENT

Francis R Koenig  
COMMISSIONER

Mark J. Smith  
COMMISSIONER