

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Lewis Weiss : 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 :  
1974.

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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 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Lewis Weiss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lewis Weiss  
c/o Thomas S. Carles  
570 W. Mount Pleasant Ave.  
Livingston, NJ 07039

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  
2nd day of May, 1984.

David Parchuck

James W. Haggard  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

# 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 :  
1974.

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 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Thomas S. Carles, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas S. Carles  
570 W. Mount Pleasant Ave.  
Livingston, NJ 07039

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  
2nd day of May, 1984.

David Parcluck

Deanna A. Hagerud  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 2, 1984

Lewis Weiss  
c/o Thomas S. Carles  
570 W. Mount Pleasant Ave.  
Livingston, NJ 07039

Dear Mr. Weiss:

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  
Thomas S. Carles  
570 W. Mount Pleasant Ave.  
Livingston, NJ 07039  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
LEWIS WEISS	:	DECISION
	:	
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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Petitioner, Lewis Weiss, c/o Thomas S. Carles, 570 West Mount Pleasant Avenue, Livingston, New Jersey 07039, 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. 31549).

A formal hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 7, 1983 at 1:30 P.M., with all briefs to be submitted by July 26, 1983. Petitioner appeared by Thomas S. Carles, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether, during 1974, petitioner was domiciled in New York and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus a resident individual under Tax Law section 605(a)(1).

FINDINGS OF FACT

1. On January 16, 1980, the Audit Division issued a Statement of Audit Changes to petitioner and his wife, Roberte, which contained the following explanation:

"A search of our files fails to show a New York State income tax return filed under your name or social security number. Therefore, your New York State income tax return is estimated pursuant to New York State Income Tax Law."

Penalties were also imposed pursuant to sections 685(a)(1) and (a)(2) of the Tax Law.

On July 24, 1980, the Audit Division issued a Notice of Deficiency to Lewis and Roberte Weiss imposing personal income tax of \$10,344.05, plus penalty and interest of \$9,532.61, for a total amount due of \$19,876.66.

2. At the hearing, it was stipulated by the Audit Division and petitioner's representative that Roberte Weiss is not a party to the petition and that her name is to be removed from the Notice of Deficiency.

3. A copy of Form 1040, U.S. Individual Income Tax Return for 1974, indicated the following name and address: Lewis and Roberte Weiss, 117 Union St., Palisades, NJ 07650. Attached to the return was a copy of an Internal Revenue Service Income Tax Audit Change with the same names and address showing an adjustment to income - additional "DISC" income. This adjustment was related to Aeromet International, Inc. which filed Form 1120-DISC, Domestic International Sales Corporation Return. The return indicated petitioner, Lewis Weiss, as a shareholder and his address as Spring Valley, New York.

4. Petitioner and his wife were domiciliaries and residents of New York State until 1970. In March, 1970, Lewis Weiss accepted a position as sales manager of Aerospace Metals, Inc. of Azusa, California, at their Connecticut office. He and his family moved to Connecticut. He and his wife filed a joint New York State Income Tax Nonresident Return for 1970 on which they indicated that they were residents of New York State from January 1, 1970 to March 31, 1970 and indicated their address as 93 Towne House Road, Hamden Connecticut.

5. Due to poor business conditions, Aerospace Metals, Inc. closed its Connecticut office on August 31, 1971 and Mr. Weiss' employment was terminated. In September, 1971, he accepted a position with KLM Metals Co., Inc. of Plainview, N.Y. at their Branford, Connecticut office. He was employed by KLM Metals Co., Inc. until March, 1972 when they closed their branch office. Petitioner and his wife filed a New York State Income Tax Nonresident Return for 1972 which indicated their home address as 128 Blackwood Lane, Stamford, Connecticut.

6. Petitioner and his wife filed a joint U.S. Individual Income Tax Return for 1973 indicating their address as 37 Crabapple, Stamford, Connecticut.

7. In 1974, Mr. Weiss moved from Stamford, Connecticut to New Jersey where he started a business called Aeromet, Inc. which was located at 117 Union Street, Palisades Park, New Jersey. Mr. Weiss resided at 117A Union Street, Palisades Park, New Jersey. Petitioner's residence consisted of a two-story gambrel-roofed house while the business office was an attached one-story flat-roofed building.

8. At the same time that Lewis Weiss moved from Connecticut to New Jersey, Roberte Weiss and the children moved from Connecticut to Spring Valley, New York. Separate residences were established and maintained since petitioner and his wife were experiencing marital difficulties. On June 1, 1974, a residence was purchased in the joint names of Lewis and Roberte Weiss at 10 Renfro Road, Spring Valley, New York. This residence was jointly held due to the fact that petitioner's attorney advised him that if the house was registered solely in Mrs. Weiss' name, he would in effect give his wife a substantial asset before property settlement negotiation or a suit for divorce began. Petitioner never resided in the house on Renfro Road.

9. Petitioner's marriage has been the subject of a de facto separation from the point of Mr. Weiss' departure from Connecticut in 1974. Mr. Weiss is presently involved in divorce proceedings instituted in New Jersey.

CONCLUSIONS OF LAW

A. That a resident individual means 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 (section 605(a)(1) of the Tax Law).

B. That ordinarily a wife's domicile follows that of her husband, but if they are separated in fact she may, under some circumstances, acquire her own separate domicile, even though there be no judgment or decree of separation [20 NYCRR 102.2(d)(5)].

C. That petitioner, Lewis Weiss, and Roberte Weiss were separated in fact and he was not a resident individual of New York State within the meaning and intent of section 605(a)(1) of the Tax Law.

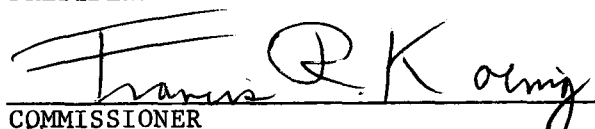
D. That the petition of Lewis Weiss is granted and the Notice of Deficiency dated July 24, 1980 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

**MAY 02 1984**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER