

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John G. Bertram :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and New York City Personal Income Tax under :
Chapter 46, Title T of the Administrative Code of :
the City of New York for the Years 1978, 1979 & :
1980. :
:

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 10th day of July, 1985, he served the within notice of Decision by certified mail upon John G. Bertram, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John G. Bertram
50 Sutton Pl. South #4J
New York, NY 10022

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
10th day of July, 1985.

David Parchuck

David A. Heglund
Authorized to administer oaths

pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John G. Bertram :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and New York City Personal Income Tax under :
Chapter 46, Title T of the Administrative Code of :
the City of New York for the Years 1978, 1979 & :
1980. :
:

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 10th day of July, 1985, he served the within notice of Decision by certified mail upon Baudouin Van den Assum, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Baudouin Van den Assum
437 Madison Ave., 27th Floor
New York, NY 10022

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
10th day of July, 1985.

David Parchuck

David A. Vogel
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 10, 1985

John G. Bertram
50 Sutton Pl. South #4J
New York, NY 10022

Dear Mr. Bertram:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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
Baudouin Van den Assum
437 Madison Ave., 27th Floor
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN G. BERTRAM	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law and New York City Personal	:	
Income Tax under Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the years 1978, 1979 and 1980.	:	

Petitioner, John G. Bertram, 50 Sutton Place South, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978, 1979 and 1980, (File Nos. 37623 and 43253).

A formal hearing was held before Thomas E. Drake, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1984 at 9:30 A.M., with all briefs to be submitted by January 16, 1985. Petitioner appeared by Baudouin Van den Assum, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anna Collelo, Esq., of counsel).

ISSUE

Whether petitioner maintained a permanent place of abode in New York State and the City of New York and spent in the aggregate more than one hundred eighty-three days during each of the years in issue in New York State and the City of New York and was thus a resident individual pursuant to section 605(a)(2) of the Tax Law and section T46-105.0(a)(2) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioner, John G. Bertram ("petitioner"), filed timely New York State nonresident income tax returns, with New York City nonresident earnings tax, for each of the years in issue. The returns listed his address as 50 Sutton Place, New York, New York.

2. On April 7, 1982, the Audit Division issued a Notice of Deficiency to petitioner asserting New York State and New York City income tax due of \$6,505.24, plus interest of \$1,537.77 for the years 1978 and 1979. On December 9, 1982, the Audit Division issued a second Notice of Deficiency to petitioner asserting New York State and New York City income tax due of \$3,893.07, plus interest of \$805.37 for the year 1980. The tax was asserted due on the grounds that petitioner was a resident of New York State and City because he maintained a permanent place of abode in New York State and City and spent more than 183 days in New York State and City during each of the years in issue.

3. At the hearing, the Audit Division's representative stipulated that petitioner was not taxable as a resident of New York State and City during 1978, as he established that he did not spend more than 183 days in the State or City during said year.

4. Prior to and during the years in issue, petitioner was employed by the Netherlands National Tourist Office ("Tourist Office") at its office located at 576 Fifth Avenue, New York, New York. Petitioner was the director of the Tourist Office's North American office. The Tourist Office provided petitioner with office space at its New York City location. Petitioner's position as director required him to travel outside New York State.

5. During the years in issue, petitioner leased an unfurnished apartment at 50 Sutton Place in New York City. The apartment consisted of a kitchen,

living room, den, bathroom and two bedrooms. Most of the furniture at the apartment belonged to petitioner. A few items of furniture at the apartment were owned by the Tourist Office. Petitioner resided in said apartment while in New York.

6. Petitioner's employment contract with the Tourist Office was for an indefinite period of time.

7. Prior to and during the years in issue, petitioner was a domiciliary of the Netherlands.

8. The Audit Division reviewed weekly business expense reports signed by petitioner and submitted by him to his employer for reimbursement of his business expenses. The Audit Division received copies of petitioner's expense reports from the Tourist Office. Based on the review, the Audit Division determined the following:

	<u>1979</u>	<u>1980</u>
Days spent in NYS & NYC	217	227
Days spent outside NYS & NYC	<u>148</u>	<u>139</u>
Total Days	<u>365</u>	<u>366</u>

At the hearing, the Audit Division's representative stipulated that petitioner spent an additional ten days in 1979 and an additional 19 days in 1980 outside New York State and New York City. This reduced the days the Audit Division considers petitioner spent in New York State and City to 207 and 208 for 1979 and 1980, respectively.

9. Subsequent to the hearing, petitioner submitted schedules showing an additional 31 days spent outside New York State and City in 1979 and an additional 28 days spent outside New York State and City in 1980. In support of the claimed additional days, petitioner submitted copies of relevant pages from his business calendar. Many of the calendar pages relied upon by petitioner to

substantiate a day outside New York State and City contain only a flight number as the relevant entry. On other pages, the only relevant entry is the name of a city or county. Some of the entries are illegible. No additional documentation was introduced to support the additional days claimed as spent outside New York State and City and no explanation was provided for the entries in the calendar pages which contradict the entries made in petitioner's expense reports.

CONCLUSIONS OF LAW

A. That section 605(a)(2) of the Tax Law and section T46-105.0(a)(2) of the Administrative Code of the City of New York define a resident individual as an individual who is not domiciled in this state and city but maintains a permanent place of abode in this state and city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state and city.

B. 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. A place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2(e)).

C. That any person domiciled outside the State who maintains a permanent place of abode within the State and City during any taxable year and claims to be a nonresident must keep and have available for examination by the Tax Commission adequate records to substantiate the fact that he did not spend more than 183 days of such taxable year within the State and City (20 NYCRR 102.2(c)).

D. That the record clearly shows that the apartment maintained by petitioner at 50 Sutton Place during 1979 and 1980 constituted a permanent place of abode in New York State and the City of New York.

E. That the schedules and calendar pages submitted by petitioner, without any additional documentation, are not adequate to substantiate that petitioner did not spend more than one hundred eighty-three days within New York State and the City of New York during 1979 and 1980. On the contrary, petitioner's own expense reports show that he did in fact spend more than one hundred eighty-three days in New York during both 1979 and 1980. Accordingly, the Audit Division properly determined that petitioner was a resident of New York State and the City of New York in 1979 and 1980.

F. That the petition of John G. Bertram is granted to the extend indicated in Finding of Fact "3"; and that, except as so granted, is in all other respects denied.


DATED: Albany, New York

JUL 10 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER