

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ISRAEL BERKENFELD

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article (8) 22 of the  
Tax Law for the Year(s) 1968 and 1969:

State of New York  
County of Albany

JANET MACK

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 22nd day of December, 1975, she served the within

Notice of Decision (~~for Redetermination~~) by (certified) mail upon Israel Berkenfeld,  
c/o Mrs. Charlotte S. Berkenfeld (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

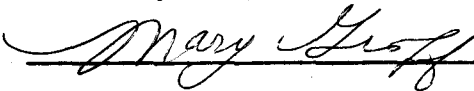
Mr. Israel Berkenfeld  
c/o Mrs. Charlotte S. Berkenfeld  
1504 North 12th Court  
Hollywood, Florida 33020

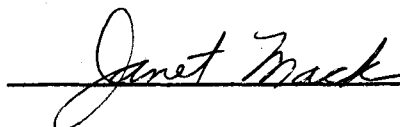
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~)  
~~of~~ 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

22nd day of December, 1975.

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ISRAEL BERKENFELD

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) 1968 and 1969 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 22nd day of December, 1975, she served the within  
Notice of Decision (~~or Determination~~) by (certified) mail upon Harry Ander, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Harry Ander, Esq.  
26 Court Street  
Suite 2412  
Brooklyn, New York 11242

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

22nd day of December, 1975.

Mary Greff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Leisner  
Mr. Coburn  
(518) 457-3850

**DATED:** Albany, New York  
**December 22, 1973**

Mr. Israel Berkenfeld  
c/o Mrs. Charlotte S. Berkenfeld  
1504 North 13th Court  
Hollywood, Florida 33020

**Dear Mrs. Berkenfeld:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section (a) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**PAUL B. COBURN**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ISRAEL BERKENFELD	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1968 and 1969.	:	

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Petitioner, Israel Berkenfeld, 1504 North 12th Court, Hollywood, Florida 33020, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969. (File Nos. 8-18628403 and 9-38922854). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 27, 1974, at 10:45 A.M. Charlotte G. Berkenfeld, as executrix of the Estate of Israel Berkenfeld, deceased, appeared by Harry Ander, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Was petitioner, Israel Berkenfeld, a resident individual of New York State during the years 1968 and 1969?

FINDINGS OF FACT

1. Petitioner, Israel Berkenfeld, and his wife filed New York State combined resident income tax returns for the years 1968 and 1969. He omitted from total income \$6,161.28 for the year 1968 and \$7,202.94 for the year 1969, which he contended was income earned outside of New York State by a nonresident.

2. On September 25, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Israel Berkenfeld, imposing personal income tax upon all of his income for the year 1968 upon the grounds that he was a resident individual of New York State during said year. On the same date it issued a Statement of Audit Changes against him for the year 1969, imposing personal income tax upon all of his income for said year on the same grounds as for 1968. It also imposed penalties pursuant to section 685(b) of the Tax Law for each of said years. In accordance with the aforesaid statements of audit changes, it issued a Notice of Deficiency in the sum of \$1,197.77.

3. Petitioner, Israel Berkenfeld, died on May 13, 1973, leaving a last will and testament which was admitted to probate in the Circuit Court for Broward County, Florida, Probate Division, on July 3, 1973. His wife, Charlotte G. Berkenfeld, was appointed as executrix of his estate. The executrix has not made application for ancillary letters testamentary in New York State. The will admitted to probate was executed in New York State in 1957 by

petitioner at which time he was residing in Brooklyn, New York. His wife also executed a similar will at the same time.

4. Petitioner, Israel Berkenfeld, was an employee of the United States Post Office in New York City until he retired in 1963. He had sustained a heart attack in 1962.

5. Petitioner, Israel Berkenfeld, was the sole stockholder of Home Owners Realty Corp., which owned and managed approximately 15 income-producing parcels of real property in New York City. During the years 1968 and 1969 his son managed the properties for the corporation, although he worked with his son when he was in New York. He received a salary of \$7,020.00 from said corporation during each of the years 1968 and 1969, which he reported as New York income.

6. Petitioner, Israel Berkenfeld, registered his automobile in Florida commencing in 1965. He held a Florida's drivers license and was a member of the Auto Club of Florida during the years 1968 and 1969.

7. Petitioner, Israel Berkenfeld, registered to vote in Florida on March 29, 1968. Between May, 1968 and March, 1972, he voted in five general elections, one primary election and three special elections. His New York State voting registration was cancelled by the Board of Elections of the City of New York.

8. Petitioner, Israel Berkenfeld, maintained bank accounts in Florida during the years 1968 and 1969.

9. Prior to 1963, petitioner, Israel Berkenfeld, resided with his wife in an apartment in Brooklyn, New York. They continued to maintain this apartment subsequent to 1963 and including the years 1968 and 1969.

10. Petitioner, Israel Berkenfeld, was licensed as a real estate salesman by the Florida Real Estate Commission on June 23, 1967. He was a licensed Florida real estate salesman and a member of the Florida Association of Realtors during the years 1968 and 1969. In 1967 he changed the address on his New York State real estate broker's license from the Brooklyn address to his Florida address.

11. Petitioner, Israel Berkenfeld, and his wife purchased an unfurnished cooperative apartment in Florida, in 1964 which they then furnished. They maintained a cooperative apartment in Florida from that date until his death, including the years 1968 and 1969.

12. Petitioner, Israel Berkenfeld's wife was employed by the Board of Education of the City of New York as a teacher and as an assistant principal during the years 1964 through 1969. During the period she lived primarily in this apartment in Brooklyn. They were not legally separated or divorced.

13. Petitioner, Israel Berkenfeld, and his wife listed their Brooklyn apartment as their home address on their Federal and New York State income tax returns.

14. Petitioner, Israel Berkenfeld, never filed a Florida declaration of domicile.

CONCLUSIONS OF LAW

A. That petitioner, Israel Berkenfeld, was domiciled in the State of Florida during the years 1968 and 1969 in accordance with the meaning and intent of 20 NYCRR 102.2(d).

B. That petitioner, Israel Berkenfeld, maintained a permanent place of abode in New York State in accordance with the meaning and intent of sections 605(a)(2) and 605(b) of the Tax Law and 20 NYCRR 102.2.

C. That petitioner, Israel Berkenfeld, did not keep or maintain any recordation to substantiate the claim that he did not spend more than 183 days in New York State during the taxable years in question as required by 20 NYCRR 102.2(c).

D. That petitioner, Israel Berkenfeld, was a resident individual as set forth in 20 NYCRR 102.2 and as such is liable for personal income tax imposed by Article 22 of the Tax Law, by virtue of his maintenance of a permanent abode in New York State and the failure to prove he did not spend more than 183 days during either of the taxable years in question.

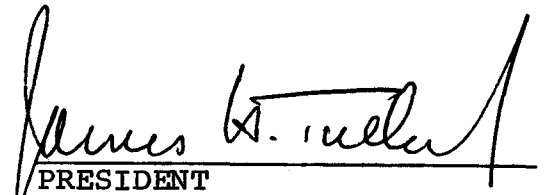
E. That petitioner, Israel Berkenfeld, acted in good faith in his preparation of tax returns for the taxable years 1968 and 1969 and that the deficiency assessed was not due to his negligence or intentional disregard of Article 22 of the Tax Law of the rules and regulations promulgated thereunder.



F. That the petition of Israel Berkenfeld be denied as regards the imposition of personal income tax liability and interest pursuant to Article 22 of the Tax Law. The petition is granted as to the dismissal of any penalty assessments on the deficiency.

DATED: Albany, New York  
December 19, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER