

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HERBERT D. KLEIN and
MONIKA P. KLEIN

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
~~XXX(CERTIFIED)XXX~~

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (3) 22 of the
Tax Law for the Year (3) 1969.

State of New York
County of Albany

Yvette Nackenson, 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 29 day of March, 1976, she served the within
Notice of Decision (~~redetermination~~) by (~~certified~~) mail upon Herbert D. Klein
and Monika P. Klein (~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Herbert D. Klein
IM Roetel 10A
Zug, Switzerland

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

29 day of March, 1976.

Just

Yvette Nackenson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT D. KLEIN and

MONIKA P. KLEIN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(ss)~~ 22 of the
Tax Law for the Year ~~(ss)~~ 1969.

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

State of New York
County of Albany

Yvette Nackenson, 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 29th day of March, 1976, she served the within
Notice of Decision (~~on Redetermination~~) by (certified) mail upon Frank G.
Opton, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Frank G. Opton, Esq.
Lynton, Klein, Opton and Saslow, Esqs.
100 Park Avenue
New York, New York 10017
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

29th day of March, 1976

Janet M. [Signature]

Yvette Nackenson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
March 29, 1976

Mr. & Mrs. Herbert D. Klein
IM Rostel 10A
Zug, Switzerland

Dear Mr. & Mrs. Klein:

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

Please take further notice that pursuant to
Section (s) **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 D. COBURN
SUPERVISING TAX

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HERBERT D. KLEIN and	:	
MONIKA P. KLEIN	:	DECISION
for Redetermination of Deficiency or	:	
for a Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	

Petitioners, Herbert D. Klein and Monika P. Klein, IM Roetel 10A, Zug, Switzerland, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. File No. 9-49266580.

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 April 21, 1975, at 1:40 P.M. Petitioners appeared by Lynton, Klein, Opton and Saslow, Esqs., (Frank G. Opton, Esq. of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Were petitioners, Herbert D. Klein and Monika P. Klein, residents of New York State for income tax purposes for the year 1969?

FINDINGS OF FACT

1. Petitioners, Herbert D. Klein and Monika P. Klein, timely filed a New York State income tax resident return for the period of January 1, 1969 to May 21, 1969. They claimed a refund of \$1,017.20. They omitted from the total New York income their additional income consisting of salary earned by Herbert D. Klein outside of New York State, dividends and interest.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Herbert D. Klein and Monika P. Klein, imposing New York State personal income tax upon all their income for the year 1969 as determined from their Federal return as submitted, upon the grounds that they were New York State residents for the entire year. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$222.55.

3. Petitioners, Herbert D. Klein and Monika P. Klein, resided at 36 East 36th Street, New York, New York, on a lease that expired September, 1970. On December 28, 1968, Herbert D. Klein contracted with W.K. Administration, Inc., to provide administrative and managerial services to the parent company, Supradur Manufacturing Corporation, effective January 1, 1969. The contract provided that Herbert D. Klein was to take up residence in Switzerland or such other location outside the U.S. as required,

could be terminated by either party on December 31, 1971, or at end of any subsequent year upon six months prior notice, and any controversy arising out of said contract be determined in the City of New York according to the rules of the American Arbitration Association.

4. Petitioners, Herbert D. Klein and Monika P. Klein, relocated to Switzerland in April, 1969. On or about May 22, 1969, they leased an apartment in Luz, Switzerland, for a year, renewable yearly thereafter.

5. Petitioners, Herbert D. Klein and Monika P. Klein, are U.S. citizens. Monika P. Klein, formerly a German national, secured derivative U.S. citizenship through her husband, Herbert D. Klein, whom she married in 1968.

6. Petitioners, Herbert D. Klein and Monika P. Klein, retained savings bank accounts within the State of New York. Herbert D. Klein continued his membership as a nonresident in many organizations such as the Association of New York City, Metropolitan Opera Guild, New York City Club, the New York University Club, the Rotary Club, and the New York County Lawyer's Association; and he notified the Board of Elections to cancel his registration because of the move.

7. Petitioners, Herbert D. Klein and Monika P. Klein, returned to their New York apartment on November 26, 1969, on an extended

Christmas holiday during which time they were able to find a tenant to take over their apartment as of January 1, 1970.

8. Petitioner, Herbert D. Klein, while in New York made and executed a will on the 29th of December, 1969, disposing of his estate. He stated thereon that he resided in the City of Zug, Switzerland.

9. Petitioners, Herbert D. Klein and Monika P. Klein, in July, 1969, purchased a car from a Zug, Switzerland dealer, acquired a Swiss driver's license and automobile insurance, secured a Swiss social security card, and joined the Rotary Club of Switzerland, the Swiss Alpine Club, the Swiss Migros Association, and the Swiss Touring Club.

CONCLUSIONS OF LAW

A. That petitioners, Herbert D. Klein and Monika P. Klein, were domiciled in New York State during 1969. They at no time effected a change of domicile to Switzerland.

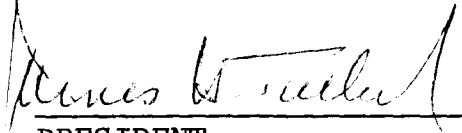
B. That since petitioners, Herbert D. Klein and Monika P. Klein, were domiciliaries of New York during the year 1969 and since they maintained a permanent place of abode and spent more than thirty days during said year in New York State, therefore, they are subject to New York State personal income tax as resident individuals on all their income including income earned without

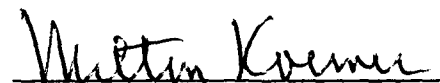
the State of New York for 1969 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law.

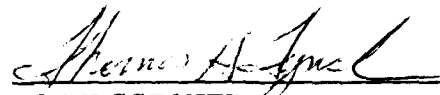
C. That the petition of Herbert D. Klein and Monika P. Klein is denied and the Notice of Deficiency issued November 26, 1973, is sustained.

DATED: Albany, New York
March 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER