

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAUL BABBIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~xxxxxx~~ 1973:

State of New York
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, ~~she~~ served the within
Notice of Decision by (~~xxxxxx~~) mail upon Saul Babbin
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Saul Babbin
c/o Penwalt of Canada, LTD.
393 Midwest Road
Scarborough, Ontario, Canada MIP 3A6
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 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
~~xxxxxx~~ last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

4th day of March , 1977.

Bruce Batchelor

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL BABBIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(2) 22 of the :
Tax Law for the Year(~~1972~~) 1973.:
~~(1972)~~

State of New York
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, she served the within
Notice of Decision by (certified) mail upon Martin S. Handelman, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin S. Handelman, Esq.
410 Reynolds Arcade Building
Rochester, NY 14614

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 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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Saul Babbín
c/o Penwalt of Canada, LTD.
393 Midwest Road
Scarborough, Ontario, Canada M1P 3A6

Dear Mr. Babbín:

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

Please take further notice that pursuant to
Section(5) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAUL BABBIN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1973.	:	

Petitioner, Saul Babbin, c/o Penwalt of Canada, LTD., 393 Midwest Road, Scarborough, Ontario, Canada MIP 3A6, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1973. (File No. 3-49266861).

A small claims hearing was held August 10, 1976, at 9:15 A.M., at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, before Harry Huebsch, Hearing Officer. Petitioner, Saul Babbin, appeared with his representative, Martin S. Handelman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq. of counsel).

ISSUE

Was petitioner, Saul Babbin, a resident of New York in 1973 for income tax purposes?

FINDINGS OF FACT

1. Petitioner, Saul Babbin, filed a New York State personal income nonresident return for 1973. He allocated his salary income as to days worked within and without New York State. The Income Tax Bureau held that petitioner, Saul Babbin, was a domiciliary of New York and therefore taxable as a resident on all income wherever earned. A Notice of Deficiency dated January 26, 1976, was issued in the amount of \$1,781.70 personal income tax due, plus \$167.56 interest, less \$529.00 overpayment shown on the return, for a total sum of \$1,420.26.

2. Petitioner, Saul Babbin, was domiciled in New York State his entire life. He lived in Rochester, in his own home, with his wife and children. Petitioner, Saul Babbin, worked for Penwalt Corporation which was a multinational corporation with many divisions. He desired, and was experienced in, international work and had previously worked for Penwalt in most South American countries.

3. Penwalt Corporation wished to expand its European operations and in September, 1972, petitioner, Saul Babbin, was appointed as general manager of European operations. In December of 1972, petitioner, Saul Babbin, left New York with only his personal possessions and rented a one-room flat in the vicinity of Penwalt's plant which was located in Ireland. He lived in the

one-room flat until he decided on a location for a permanent base for the European operation. He then moved to a hotel for a short period and in February of 1973, he rented a house in The Netherlands which was to serve as his residence and also as his main office. Petitioner, Saul Babbin's New York home was sold in June, 1973, and his wife and children joined him in The Netherlands with all their possessions.

4. Petitioner, Saul Babbin, remained in The Netherlands until 1976, when he was transferred to Canada. During his stay in The Netherlands, he retained his United States citizenship and did not take any steps to become a citizen of The Netherlands. He had no written contract with Penwalt Corporation and could be transferred or dismissed at any time. After the sale of his New York home, petitioner, Saul Babbin, owned no property in the United States or The Netherlands. Petitioner, Saul Babbin, filed Federal Form 2555, "Exemption of Income Earned Abroad," indicating that he resided in Ireland from December 18, 1972 to March 31, 1973, and that he resided in The Netherlands from April 1, 1973, to the end of the year. The Federal Form 2555, also indicated his visa was renewable periodically.

CONCLUSIONS OF LAW

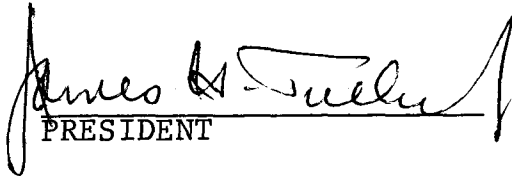
A. That petitioner, Saul Babbin, was domiciled in New York State during 1973. He did not change his domicile to The Netherlands.


B. That since petitioner, Saul Babbin, was a domiciliary of New York State, maintained a permanent place of abode in New York State for part of the year, and did not maintain a permanent place of abode outside of New York State for the entire year, he was, therefore, subject to personal income tax as a resident individual on all of his income including income earned outside of New York State during said year, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law, and 20 NYCRR 102.2.

C. That the petition of Saul Babbin is denied and the Notice of Deficiency issued January 26, 1976, is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER