

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GARY D. KOHL	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years	:	
1971, 1972, 1973 and 1974.	:	

Petitioner, Gary D. Kohl, 402 Arnold Boulevard, Box 59, Abilene, Texas 79605, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1971, 1972, 1973 and 1974. (File Nos. 3-30183188 and 4-56462216). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on September 16, 1976, at 9:15 A.M. Petitioner appeared by Mr. William G. Kohl. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Was the petitioner a "resident individual" within the meaning of section 605 of the Tax Law for the years 1971, 1972, 1973 and 1974?

FINDINGS OF FACT

1. Petitioner, Gary D. Kohl, timely filed New York State income tax resident returns for the years 1971 through 1974.

2. On September 4, 1974, petitioner, Gary D. Kohl, filed claims for credit or refund of personal income tax for the years 1971, 1972 and 1973. A claim for refund was not filed by the petitioner for 1974; however, the petition filed by him included the year 1974.

3. On February 24, 1975, the Income Tax Bureau issued a refund denial for the years 1971, 1972 and 1973; and on August 25, 1975, a refund denial was issued for the year 1974.

4. Petitioner, Gary D. Kohl, was a domiciliary of New York State at the time of his induction into the United States Air Force in January, 1969. He remained on active military duty until he was discharged on July 8, 1974.

5. Petitioner, Gary D. Kohl, maintained an on base furnished apartment at Mather Air Force Base in California from July, 1970 until February, 1971. From February, 1971 until June, 1971, he maintained an on base furnished apartment at Castle Air Force Base in California. During the period June, 1971 until he was discharged in July, 1974, he maintained an on base furnished apartment at Dyess Air Force Base in Texas. He maintained these apartments in lieu of accepting an allowance for housing.

6. Petitioner, Gary D. Kohl, maintained no permanent place of abode in New York State during 1971 through 1974. He spent 44 days and 41 days in New York State during the years 1972 and 1973, respectively.

7. Petitioner, Gary D. Kohl, was unmarried during all the years in question. Upon his discharge from the Air Force he became a student at Abilene Christian College in Abilene, Texas.

CONCLUSIONS OF LAW

A. That the petitioner, Gary D. Kohl, by living on base in government furnished quarters, did not maintain a permanent place of abode outside New York State in accordance with 20 NYCRR 102.2(e), for the years 1971, 1972, 1973 and 1974.

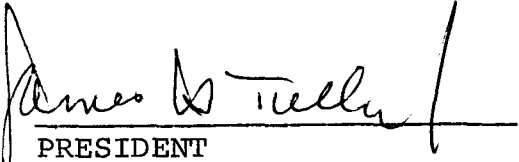
B. That the petitioner, Gary D. Kohl, by spending more than 30 days of the taxable years 1972 and 1973 in New York State, has not met the thirty-day requirement as set forth in section 605(a)(1) of the Tax Law.

C. That the petitioner, Gary D. Kohl, was a domiciliary of New York State during 1971 through 1974 and during this period he failed to satisfy all three requirements, which would enable him to be a nonresident of New York for income tax purposes within the meaning and intent of section 605(a) of the Tax Law and in accordance with 20 NYCRR 102.2(b).

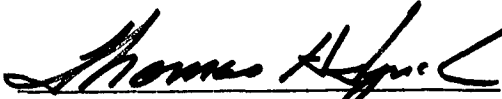
D. That the petition of Gary D. Kohl is denied and the denials of claim for refund issued February 24, 1975 and August 25, 1975 are sustained.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK.
STATE TAX COMMISSION

In the Matter of the Petition

of

GARY D. KOHL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1971, 1972, 1973 and 1974.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of January , 1977 , ~~he~~ served the within
Notice of Decision by (certified) mail upon Gary D. Kohl
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Gary D. Kohl
402 Arnold Boulevard, Box 59
Abilene, Texas 79605

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)~~
~~xxxxx~~ 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

14th day of January , 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GARY D. KOHL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(22)~~ 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971, 1972, 1973 and 1974.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of January , 1977, he served the within
Notice of Decision by (certified) mail upon William G. Kohl

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. William G. Kohl
21 Hemstreet Road, RD #2
East Aurora, New York 14052

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

14th day of January , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

January 14, 1977

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

Mr. Gary D. Kohl
402 Arnold Boulevard, Box 59
Abilene, Texas 79605

Dear Mr. Kohl:

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

Please take further notice that pursuant to
Section(2) **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
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative: