

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILFRIED HAUMANN

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

John Huhn , 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 25th day of August , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Wilfried Haumann

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Wilfried Haumann
67 Stonybrook Drive
Brownsburg, Indiana 46112

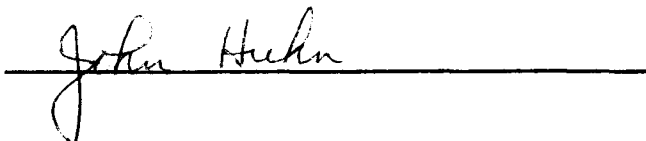
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 25, 1978

**Mr. Wilfried Haumann
67 Stonybrook Drive
Brownsburg, Indiana 46112**

Dear Mr. Haumann:

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 ~~(3)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILFRIED HAUMANN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Wilfried Haumann, 67 Stonybrook Drive, Brownsburg, Indiana 46112, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 12108).

On January 9, 1977, petitioner, Wilfried Haumann, advised the State Tax Commission (in writing) that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner was a resident of New York State for income tax purposes for the taxable year 1972.

FINDINGS OF FACT

1. On February 5, 1974, petitioner, Wilfried Haumann, and Anne C. Haumann (his wife) filed a New York State income tax nonresident return for 1972, on which they indicated that they were residents of New York State for the period January 1, 1972 to June 1, 1972. Petitioner attached to said return a copy of

an "Application for Extension of Time for Filing U.S. Income Tax Return" (Federal Form 2350), showing that an extension of time to file a 1972 Federal income tax return until February 2, 1974 was granted by the Internal Revenue Service.

2. On April 23, 1974, the Income Tax Bureau issued a Statement of Audit Changes against Wilfried and Anne C. Haumann in the amount of \$1,671.48, plus interest of \$128.10, for a total of \$1,799.58. This was done on the grounds that petitioner and his wife were residents and domiciliaries of New York State for all of 1972. On December 26, 1974, the Income Tax Bureau received an amended return dated November 25, 1974 from petitioner and his wife for 1972, which was filed on the resident New York State combined income tax return (Form IT-208). On said amended return, petitioner and his wife included their income, deductions and exemptions for the entire year and computed a total tax due of \$1,324.41, plus interest of \$100.91, for a total of \$1,425.32. The amount of \$1,425.32 was paid. However, the Income Tax Bureau determined that petitioner owed tax and interest in excess of the amounts shown on the amended 1972 New York return. Therefore, the Bureau issued a Notice and Demand against petitioner on March 21, 1975 in the amount of \$116.25, which amount petitioner subsequently paid.

3. On April 23, 1975, the Income Tax Bureau notified petitioner that his letter dated March 31, 1975 was being considered as a formal claim for refund. On April 24, 1975, the Income Tax Bureau sent petitioner a Notice of Disallowance (Form IT-50.3), thereby formally disallowing petitioner's claim for refund for 1972 in the amount of \$1,541.57.

4. In December of 1975, petitioner, Wilfried Haumann, filed a petition for redetermination of a deficiency or for refund of personal income tax paid for the taxable year 1972, consisting of \$1,474.52 and \$67.05 in interest charges, on the grounds that he was a nonresident during the period June, 1972 through December 31, 1972.

5. Petitioner worked and resided in Indiana until 1963, at which time he left Indiana and accepted an assignment from his employer, the Union Carbide Corporation ("Union Carbide"), to work in Europe. In 1969 petitioner left Europe and returned to the United States to accept an assignment from Union Carbide in New York State. On July 7, 1969, he purchased a residence at 8 Joseph Wallace Drive, Croton-on-Hudson, New York, where he and his family resided until the sale of said residence on June 26, 1972. Petitioner accepted an assignment from his employer to work in Singapore in Southeast Asia. He arrived in Singapore with his family and household possessions on July 2, 1972. In 1974, he was transferred to Hong Kong by Union Carbide. He contended that, at his request, he was assigned by his employer to work in Indianapolis in 1975. While living and working in the Far East

from July 2, 1972 to 1975, petitioner did not maintain a residence in the United States. Petitioner presently resides in Brownsburg, Indiana.

6. Petitioner and his wife each received a Notice of Proposed Cancellation of Registration from the Westchester County Board of Elections on August 29, 1972, specifying that a report to its office indicated that they had moved from 8 Joseph Wallace Drive, Croton-on-Hudson, New York. These notices informed petitioner and his wife to re-register from their new address so that they may be able to vote. Petitioner contended that these notices demonstrate that he changed his New York domicile, since the Westchester County Board of Elections recognized the termination of his residency on August 29, 1972 and thereby informed him of the cancellation of his registration in that county as a voter.

7. In his letter to the Income Tax Bureau dated March 12, 1974, petitioner indicated that he intended to relinquish his New York domicile in 1972, when he was transferred to Singapore by his employer. He further indicated that he had established a new permanent residence in Singapore and that his visa provided for an "employment pass" which was valid until April 27, 1974, but that it would be renewed by his company for another six months. Petitioner also indicated that he would be transferred by his employer to Hong Kong in the summer of 1974.

8. In his petition, Wilfried Haumann contended that his residence in New York was temporary and that he did not recognize New York as his domicile. Rather, he contended that he considered himself to be a domiciliary of the State of Indiana, since he intended to return to Indiana. Petitioner contended that his intention to return to Indiana is demonstrated by the fact that part of his home-leave vacations from the Far East were spent in Indianapolis and not in New York. He further contended that his intended domicile was also demonstrated by the fact that his son enrolled in De Paul University in Greencastle, Indiana, in 1972 and that his daughter enrolled in Purdue University in Lafayette, Indiana, in 1973.

9. Petitioner submitted affidavits showing that (a) he had been a signatory on accounts with the First Bank and Trust Company, Indianapolis, Indiana, since November 1958, (b) Robert N. Bowen & Associates, Inc. had provided petitioner with coverage for life, automobile and property insurance since 1957 and, (c) petitioner had visited friends in Indiana during his vacation leaves while serving abroad. Other information submitted by petitioner shows that during 1972, he received interest income from New York savings institutions substantially in excess of the interest income he received from the Indiana savings institution.

CONCLUSIONS OF LAW

A. That petitioner, Wilfried Haumann, has failed to sustain the burden of proof required to show that he was domiciled in any state other than New York State during 1972, that he intended to abandon his New York domicile when he went to work in the Far East and that he established a new domicile and permanent residence in either Singapore or Hong Kong. Therefore, he is considered to have been domiciled in New York State during all of 1972. Accordingly, he is taxable as a resident of New York State for 1972 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), since (1) he maintained a permanent place of abode in New York State, (2) he did not maintain a permanent place of abode outside New York State for the entire taxable year and (3) he spent in the aggregate more than 30 days in New York State during 1972.

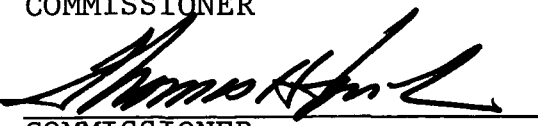
B. That the petition of Wilfried Haumann is denied and the Notice of Disallowance issued April 24, 1975 is sustained.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER