

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES R. ANDERSON and D. JOAN ANDERSON :

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 (X) or Period (X) :
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 14th day of February , 1978, she served the within

Notice of Decision by (certified) mail upon Charles R. & D. Joan
Anderson

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

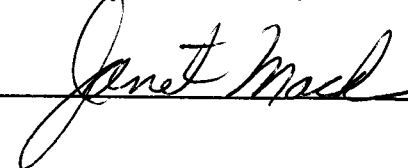
as follows: Charles R. & D. Joan Anderson
64th Ordinance Co.
A.P.O. New York 09144

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~~
~~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 February , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES R. ANDERSON and D. JOAN ANDERSON :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~30~~ 22 of the :
Tax Law for the Year ~~1971~~ ~~Period(s)~~ :
1972

State of New York
County of Albany

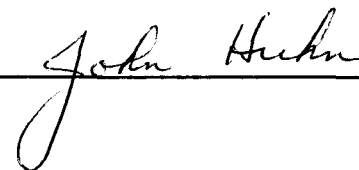
John Huhn , being duly sworn, deposes and says that
X~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978, X~~He~~ served the within
Notice of Decision by (certified) mail upon John F. Finn
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John F. Finn
One Kings Highway
Tappan, New York 10983
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 February , 19 78







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

February 14, 1978

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

**Charles R. & D. Joan Anderson
64th Ordinance Co.
A.P.O. New York 09144**

Dear Mr. & Mrs. Anderson:

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 ~~13~~ **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 CHYTRWATT
HEARING OFFICER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

CHARLES R. ANDERSON and D. JOAN ANDERSON :

DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year 1972. :

:

Petitioners, Charles R. Anderson and D. Joan Anderson, residing at 64th Ordinance Co., A.P.O. New York 09144, 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. 00152).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 22, 1977 at 2:45 P.M. Petitioners appeared by John J. Finn, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the petitioners were nonresidents of the State of New York for income tax purposes for any part of 1972.

FINDINGS OF FACT

1. Petitioners, Charles R. Anderson and D. Joan Anderson, timely filed a New York State resident income tax return for the year 1972, indicating that they were residents of New York State from January 1, 1972 to January 21, 1972.

2. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners, based on a Statement of Audit Changes which held that they were domiciled in New York State and taxable as residents for all of 1972.

3. Petitioner Charles R. Anderson is a civilian employee of the United States Government, Department of Defense, in the service of the Department of the Army. He began his employment with the Department of Defense in 1968, at which time he served at the Mt. Carroll, Illinois, army installation. On or about January 1969, he was transferred to the Seneca Falls, New York, army installation where he served for three years, until his change of status orders directed him to proceed to the army installation at Fischback, Germany, for which he departed on January 21, 1972.

4. Petitioners, Charles R. Anderson and D. Joan Anderson, contended that they were domiciliaries of the State of New York for the entire year 1972. However, they further maintain that from January 21, 1972 to December 31, 1972, they were non-residents of the State of New York for income tax purposes.

5. Petitioners, Charles R. Anderson and D. Joan Anderson, maintained a permanent place of abode in New York State until January 21, 1972, and from January 21, 1972 to December 31, 1972, they maintained a permanent place of abode in Fischback, Germany.

6. Petitioners, Charles R. Anderson and D. Joan Anderson, contended that the deficiency (as issued by the Income Tax Bureau regarding their residency status) was unconstitutional.

CONCLUSIONS OF LAW

A. That the petitioners, Charles R. Anderson and D. Joan Anderson, were domiciliaries of New York State for the entire year 1972, and, since they did not meet the

conditions set forth in section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), they are held to be New York State residents for income tax purposes for the entire year 1972.

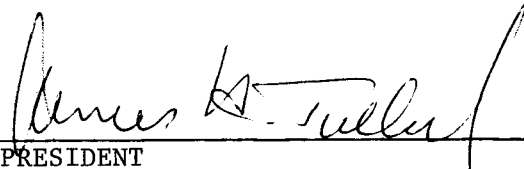
B. That the constitutionality of the Laws of the State of New York is presumed at the administrative level by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) are constitutional to the extent that they relate to the imposition of the income tax liability on the petitioners.


C. That the petition of Charles R. Anderson and D. Joan Anderson is denied and the Notice of Deficiency issued on September 30, 1974 in the sum of \$329.34 is sustained.

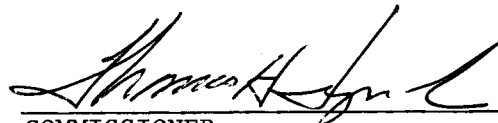
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

February 14, 1978

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

Charles R. & D. Joan Anderson
64th Ordinance Co.
A.P.O. New York 09144

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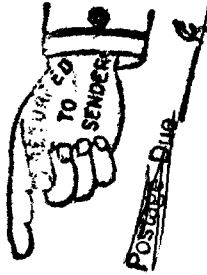
Sincerely,

JOSEPH CHYRYWATY
HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227



Charles R. & D. Joan Anderson
~~64th Ordinance Co.~~
~~A.P.O. New York 09144~~

NO RECORD
APO 09144

NO RECORD
LOCATOR
APO 09189-09144
27 Feb '78

24 FEB 1978 Day

STATE OF NEW YORK

STATE TAX COMMISSION

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B. That the constitutionality of the Laws of the State of New York is presumed at the administrative level by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) are constitutional to the extent that they relate to the imposition of the income tax liability on the petitioners.

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DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER