

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL W. CUKIERSKI

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) ~~or Period(s)~~ :
1972 and 1973.

State of New York
County of Albany

John Huhn , 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 6th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Michael W. Cukierski

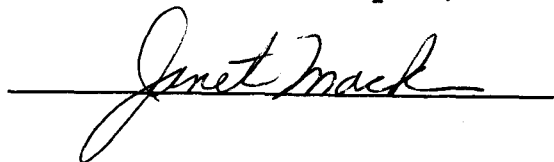
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Michael W. Cukierski
Route 1, Box 116
Halfway, Oregon 97834

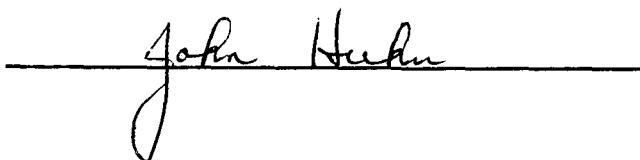
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL W. CUKIERSKI

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) ~~or Redetermined~~ :
1972 and 1973.

State of New York
County of Albany

John Huhn, 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 6th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Patrick W. Cukierski

(representative of) the petitioner in the within proceeding,

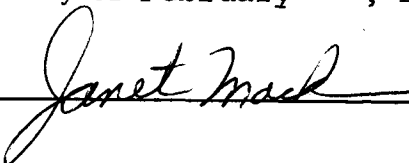
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Patrick W. Cukierski
c/o United Mercantile Agencies, Inc.
One North Broadway
White Plains, New York 10601

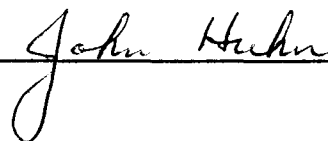
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the United States Postal Service within the State of New York.

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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

6th day of February, 1978







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

February 6, 1978

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

**Mr. Michael W. Cukierski
Route 1, Box 116
Halfway, Oregon 97834**

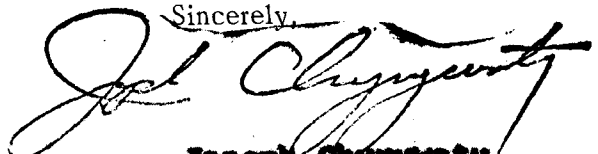
Dear Mr. Cukierski:

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(s) **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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL W. CUKIERSKI	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

Petitioner, Michael W. Cukierski, residing at Route 1, Box 116, Halfway, Oregon 97834, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 15788).

On March 23, 1977, petitioner 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 upon the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUES

I. Whether petitioner, Michael Cukierski, was domiciled in New York State for the years 1972 and 1973 and if so, whether he was taxable as a resident of New York State for said years.

II. Whether petitioner was entitled to an exemption for his wife on his 1973 New York State resident income tax return.

FINDINGS OF FACT

1. Petitioner, Michael Cukierski, filed a 1972 New York State nonresident income tax return and indicated thereon that he was a resident of New York State for the period January 1, 1972 to April 30, 1972.

2. Petitioner filed a 1973 New York State resident income tax return for the period May 1, 1973 to December 16, 1973, and a 1973 New York State nonresident income tax return for the remainder of that year. On his 1973 returns, he claimed an exemption for his wife.

3. The Income Tax Bureau issued notices of deficiency on October 28, 1974 and March 31, 1975 for the tax years 1972 and 1973, respectively. The notices were based on statements of audit changes which held that the petitioner was domiciled in New York State. Therefore, he was taxable as a resident for said years and was not entitled to an exemption for his wife for 1973 because she filed a separate return for that year.

4. During the period from January 1, 1972 to December 12, 1973, petitioner was employed by Ebasco Service, Inc. as a start-up and test engineer. Petitioner lived and worked in New York State from January 1, 1972 until May of 1972, when his employer assigned him to work in Wyoming for an indefinite period. In April of 1973,

petitioner left Wyoming to go on active duty with the U.S. Navy in Virginia. He returned to New York State on May 1, 1973. Petitioner continued his employment with Ebasco Service, Inc. until December 12, 1973, at which time he accepted employment with the General Physics Corp. in Maryland.

5. Petitioner's wife lived and worked in New York throughout 1973 and filed a separate New York resident tax return.

CONCLUSIONS OF LAW

A. That petitioner, Michael Cukierski, was domiciled in New York State prior to the time he moved to Wyoming. He has not sustained the burden of proof necessary to show that he established a new domicile outside New York State during the years 1972 and 1973 within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2(d)(2); therefore, petitioner is considered to have been domiciled in New York State during the years 1972 and 1973.

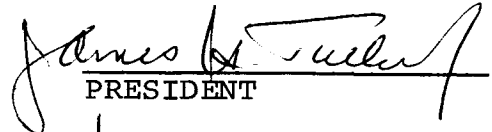
B. That petitioner spent more than 30 days within New York State during each of the years under review and is considered to have been domiciled in New York State during said years; that, therefore, he is a resident of New York State for New York State income tax purposes within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

C. That the Income Tax Bureau properly disallowed petitioner's exemption for his wife on his 1973 New York resident return.

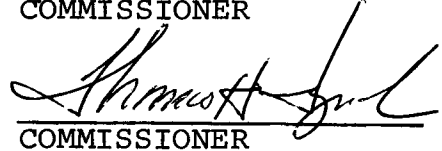
D. That the petition of Michael Cukierski is denied and the notices of deficiency dated October 28, 1974 and March 31, 1975 are sustained.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER