

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Herman & Ida Katz :  
c/o M. Herskowitz : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Year 1972. :

State of New York  
County of Albany

Jay Vredenburg, 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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Herman & Ida Katz, c/o M. Herskowitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

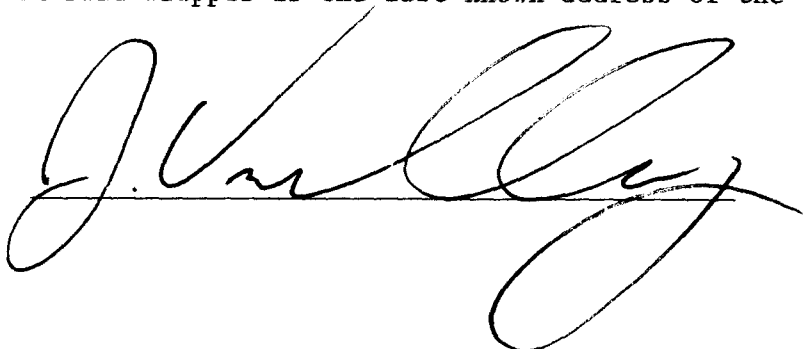
Herman & Ida Katz  
c/o M. Herskowitz  
41 E. 42nd St.  
New York, NY 10017

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
4th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Herman & Ida Katz :  
c/o M. Herskowitz : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1972. :

State of New York  
County of Albany

Jay Vredenburg, 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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Israel Schmell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Israel Schmell  
Spilky, Billet & Company, P.C.  
10 East 40th St.  
New York, NY 10016

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 April, 1980.

Joanne Knapp

[Signature]

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

April 4, 1980

Herman & Ida Katz  
c/o M. Herskowitz  
41 E. 42nd St.  
New York, NY 10017

Dear Mr. & Mrs. Katz:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Israel Schmell  
Spilky, Billet & Company, P.C.  
10 East 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HERMAN KATZ and IDA KATZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1972.	:	

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Petitioners, Herman Katz and Ida Katz, c/o M. Herskowitz, 41 East 42nd Street, New York, New York 10017, 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. 14297).

A formal hearing was scheduled to be held before Harvey Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1977. Petitioners appeared by Israel Schmell, CPA, of the accounting firm of Spilky, Billet & Company, PC. The Audit Division appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel). Petitioner's representative agreed to have this matter submitted to the State Tax Commission for its decision, based on the entire record contained in the file.

ISSUES

I. Whether petitioners were residents of New York State for 1972 for income tax purposes.

II. Whether petitioners effected a change of domicile from New York to Israel prior to or during 1972.

III. Whether during 1972, petitioners were domiciliaries of New York State and spent more than thirty days therein.

IV. Whether reasonable cause exists for petitioners' failure to timely file a tax return.

FINDINGS OF FACT

1. Petitioners, Herman Katz and Ida Katz, filed a joint New York State Income Tax Nonresident Return for 1972 (Form IT-203) on August 2, 1973. On it, they reported total Federal income of \$42,484.54, and no income which was attributable to New York State sources. Most of the income reported for Federal income tax purposes consisted of the sale or exchange of capital assets.

2. Petitioners filed New York State income tax resident returns for 1970 and 1971, listing their address as 2041 Seagirt Blvd., Far Rockaway, New York.

3. Petitioners purchased an apartment at 3 Shmaryahu Levin Street, Tel Aviv, Israel, in September of 1962. Since that time, they have been living in Israel for ten months of the year and residing in New York State for the two summer months.

4. During the year at issue and for several years prior thereto petitioners have maintained an apartment at 2041 Seagirt Blvd., Far Rockaway, New York, which they rent for the entire year. Petitioners maintained a permanent place of abode within New York State in 1972.

5. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency imposing New York State personal income tax (including minimum income tax) of \$6,389.35, plus penalty of \$1,277.87 (pursuant to section 685(a)(1)) and interest of \$1,333.84, for a total due of \$9,001.06. The Notice of Deficiency was based on the contention that petitioners were taxable as residents of New York State for 1972.

6. Petitioners have failed to present any evidence to show that they were not domiciled in New York during 1972 or that they effected a change of domicile from New York to Israel in 1972.

7. Petitioners were advised by their representative that they were non-residents and were not required to file a 1972 New York State income tax return.

CONCLUSIONS OF LAW

A. That petitioners, Herman Katz and Ida Katz, have failed to establish that they were not domiciled in New York or that they effected a change of domicile from New York. To effect a change of domicile, there must be an abandonment of the old domicile and the acquisition of a new one. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile (see Bodfish v. Gallman 50 A.D.2d 457; Klein v. State Tax Commission, 55 A.D.2d 982, aff'd., 43 N.Y. 2d 812).

B. That petitioners were domiciliaries of New York State, maintained a permanent place of abode within New York during the year in issue, and spent more than 30 days therein.

C. That petitioners were resident individuals of New York State for income tax purposes during the year in issue, within the meaning and intent of section 605(a) (1) of the Tax Law, then in effect.

D. That reasonable cause exists for waiver of the penalty asserted pursuant to section 685(a) (1) of the Tax Law; therefore, said penalty is hereby cancelled.

E. That the petition of Herman Katz and Ida Katz is granted to the extent indicated in Conclusion of Law "D", supra, and that it is in all other respects denied.

DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER