

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul & Eva Keller :

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 Years 1969 - 1971. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Paul & Eva Keller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

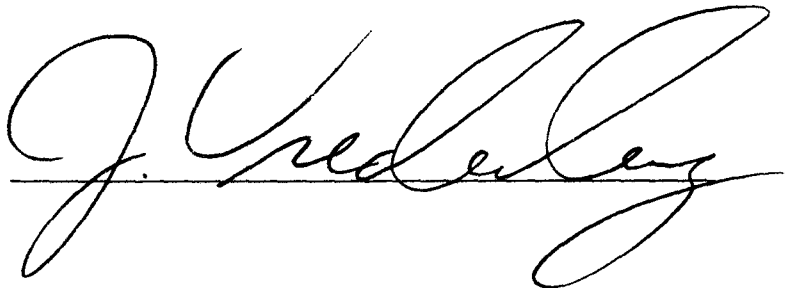
Paul & Eva Keller
63 Mount Kellet Rd., Apt. 3A
Hong Kong, B.C.C.

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
14th day of November, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul & Eva Keller :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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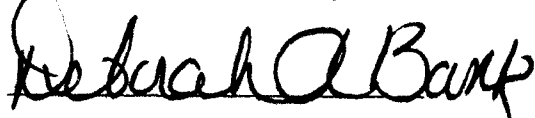
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon Armand Lichtman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

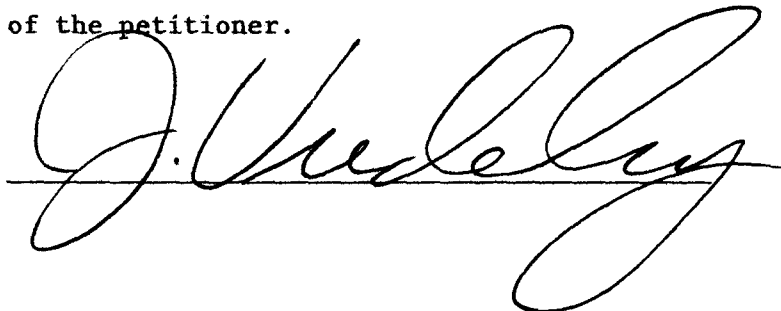
Mr. Armand Lichtman
Lopez, Edwards, Frank & Co.
111 Broadway
New York, NY 10006

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 November, 1980.





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

November 14, 1980

Paul & Eva Keller
63 Mount Kellet Rd., Apt. 3A
Hong Kong, B.C.C.

Dear Mr. & Mrs. Keller:

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
Armand Lichtman
Lopez, Edwards, Frank & Co.
111 Broadway
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL KELLER and EVA KELLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1969, 1970 and 1971. :

Petitioners, Paul Keller and Eva Keller, 63 Mount Kellet Road, Apt. 3-A, Hong Kong, B.C.C., 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 1969, 1970 and 1971 (File Nos. 15838 and 15839).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1980 at 1:15 P.M. Petitioners appeared by Armand Lichtman, and Felix A. Tornatore, CPA's. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in, and residents of, the State of New York during the years 1969, 1970 and 1971.

FINDINGS OF FACT

1. Petitioners, Paul Keller and Eva Keller, filed a joint New York State Income Tax Resident Return for the period January 1 through January 4, 1969. For the balance of taxable year 1969, they filed a joint New York State Income Tax Nonresident Return. For taxable year 1970, petitioners filed a joint New York State Income Tax Nonresident Return for the entire year. Additionally, in conjunction with same, they filed a New York State Income Tax

Resident Return wherein the word "None" was entered as their total New York Income and the explanatory statement "Nonresident - bona fide resident of Hong Kong B.C.C." was written. For taxable year 1971, petitioners filed a joint New York State Income Tax Nonresident Return.

2. On April 16, 1971, the Audit Division issued a Statement of Audit Changes to petitioners wherein it held that they were New York State residents for the entire year 1969. Accordingly, their income and foreign income exclusion were recomputed from available information and a tax deficiency of \$21.15 was determined to be due. Subsequently, on August 2, 1973, said document was superseded by a Statement of Refund Adjustment. Pursuant to such statement, which was prepared from amounts reported on petitioners' Federal return, they again were held to be New York State residents for the entire year 1969, but the refund claimed on their return of \$3,461.73 was reduced to a recomputed amount of \$1,722.24.

3. On October 18, 1973, the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be residents of New York State for the entire year 1970. Accordingly, their tax liability was recomputed and a Notice of Deficiency was issued against them on December 28, 1973 asserting personal income tax of \$2,061.07, plus interest of \$334.16, for a total due of \$2,395.23.

4. On April 11, 1974, the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be residents of New York State for the entire year 1971. Accordingly, their tax liability was recomputed and a Notice of Deficiency was issued against them on June 24, 1974 asserting personal income tax of \$698.32, plus interest of \$91.80, for a total due of \$790.12.

5. Petitioners contended that they changed their domicile and residence from New York State to Hong Kong, B.C.C., on January 5, 1969. Accordingly, they believe they are entitled to the full refund claimed for the year 1969 and that the deficiencies for the years 1970 and 1971 should be cancelled.

6. Petitioner Paul Keller was the sole shareholder of Merton Co., Ltd., a Hong Kong manufacturer and distributor of plastic religious and novelty items, which was incorporated on August 9, 1962. Since the business had reached the stage where it required his continual personal attention, petitioner moved to Hong Kong with his wife on January 5, 1969. Their son, who was attending school at the time, joined them later in the year.

7. On arriving in Hong Kong, petitioners leased an apartment which was still maintained by them at the time of the hearing.

8. During the years at issue, petitioner Paul Keller paid resident income taxes to Hong Kong, maintained savings and checking accounts, obtained credit cards for local stores, and joined local clubs in Hong Kong. Additionally, he obtained a Hong Kong driver's license while letting his New York license expire.

9. Petitioner Paul Keller's last Will and Testament, which was executed in New York State, indicates that he is a resident of Hong Kong. He maintained a resident visa which was renewable on an annual basis.

10. Petitioners did not apply for Hong Kong citizenship, nor did they relinquish their United States citizenship.

11. Petitioners owned a house in Harrison, New York, where they resided until their departure for Hong Kong. On August 16, 1969, the house was placed with a real estate agency for sale and was eventually sold on August 16, 1971. No details were disclosed during the hearing held herein concerning the time

or method of disposition of furnishings and household effects or whether petitioner stayed at the house while on business in New York State.

12. Petitioners continued to maintain a bank account in New York during the years at issue.

13. Prior to, and during the years at issue, petitioner Paul Keller derived substantial wages from Star Plastics Inc., 826 Broadway, New York City. Said corporation, of which petitioner owned a controlling interest, wholesaled the plastic merchandise manufactured by his Hong Kong business, Merton Co., Ltd.

14. During the years 1970 and 1971, petitioner Paul Keller additionally derived wages from Artgift Corporation. No relationship was disclosed between petitioner and said corporation, which was located at the same address as Star Plastics Inc.

15. Petitioner Paul Keller spent 81 working days in New York State during 1969. During 1970 and 1971, the number of days he spent working in New York State were 28 and 24, respectively. No information was made available with respect to the total number of days spent in New York State during each year at issue.

CONCLUSIONS OF LAW

A. That a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently [20 NYCRR 102.2(d)(3)]. Petitioners have not sustained their burden of proof required pursuant to section 689(e) of the Tax Law to show that they intended to remain in Hong Kong permanently and not return. Accordingly, petitioners remained domiciliaries of New York State during the years 1969, 1970 and 1971.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State 20 NYCRR 102.2(b) . Since petitioners have not sustained their burden of proof required pursuant to section 689(e) of the Tax Law to show that they have met the requirements enumerated above, they are therefore deemed to be residents of New York State for the years 1969, 1970 and 1971.

C. That the petition of Paul Keller and Eva Keller is denied. Accordingly, they are not entitled to a greater refund for the year 1969 than that computed on the Statement of Refund Adjustment dated August 2, 1973. Additionally, the notices of deficiency dated December 28, 1973 and June 24, 1974, for the years 1970 and 1971 respectively, are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

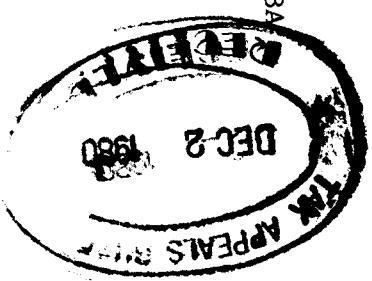
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



POSTAGE DUE _____

Bernard
12/12/80

Paul & Eva Keller
63 Mount Kellet Rd., Apt. 3A
Hong Kong, B.C.C.



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STATE TAX COMMISSION

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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 12th day of December, 1980, he served the within notice of Decision by certified mail upon Paul & Eva Keller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Eva Keller
63 Mount Kellet Rd., Apt. 3A
Hong Kong, B.C.C.

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
12th day of December, 1980.

Jean Schully

J. Vredenburg