

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HANS BOMBECK

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1967

State of New York
County of Albany

Martha Funaro, 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 15th day of May, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Hans Bombeck

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Hans Bombeck

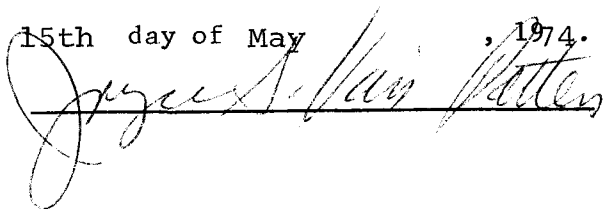
20 Ridley Park
Singapore 10, Singapore

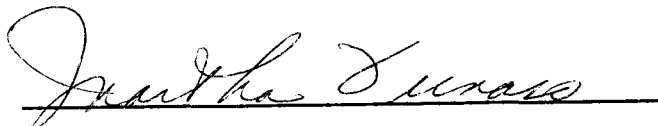
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

15th day of May, 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HANS BOMBECK

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1967

State of New York
County of Albany

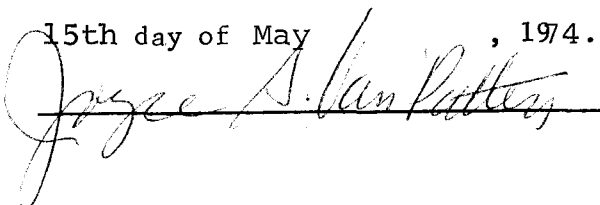
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of May , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Max Kochman, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Max Kochman, C.P.A.
11 West 42nd Street
New York, New York 10036

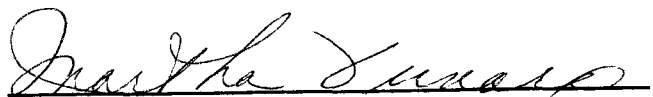
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

15th day of May , 1974.


Joyce S. Van Patten


Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 15, 1974

Mr. Hans Bombeck
20 Ridley Park
Singapore 10, Singapore

Dear Mr. Bombeck:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
:
of :
:
HANS BOMBECK :
DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1967. :
:

A hearing was duly held on September 13, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer.

The petitioner was represented by Max Kochman, C.P.A.

The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

The issue in this case is whether petitioner became a domiciliary of New York and remained a domiciliary of New York during the latter part of 1967.

FINDINGS OF FACT

1. Petitioner was born and was raised in Germany. He remained a citizen of Germany until 1968.

2. In 1959, petitioner was employed by a United States corporation and after a training period of a year in the United States and was stationed in England.

3. In 1963, petitioner became an employee of the Habage Corporation, a German corporation and was assigned to their New York City office. His field of work was international marketing which necessitates a great deal of traveling in any job assignment. Any career advancement with Habage would have required him to return to Germany. He entered the United States at this time, however, as an immigrant. During this time, he had an apartment at 400 East 86th Street, New York City. He left Habage in May, 1966.

4. After leaving Habage, petitioner traveled in Europe and the United States and attended a summer season for executives at the University of Virginia.

During this time and before April, 1967, the petitioner still maintained his New York apartment. However, he spent most of his weekends in Great Barrington, Massachusetts. His closest friends lived in Great Barrington and he had no living relatives. He neither owned nor leased property in Massachusetts.

5. Petitioner was hired on January 1, 1967, by Pfizer International, Inc. He spent some time in a training program while he stayed at his New York apartment. He was sent to

Australia in April, 1967, and later to Japan. He gave up his New York City apartment at this time. He did not return to the United States until July 8, 1968.

6. In early 1967 and before leaving for Australia, petitioner made application to file a petition for naturalization as a citizen of the United States. Apparently, the preliminary investigation and interrogations on said application, the filing of the petition for naturalization and the preliminary examination and hearing on the petition occurred at about the same time. However, the petition would appear to have been effective only at the same time in 1968 when the five-year residence requirement would have been met. Although petitioner expected to be abroad, he intended to fulfill residence requirements for citizenship by reason of provisions of law (See 8 U.S.C., 1427(b)) allowing for the absences of employees of American firms engaged in foreign trade or commerce. All naturalization proceedings took place in Boston, Massachusetts, because petitioner claimed as his residence for the prior six months an address in Great Barrington, Massachusetts. As he contemplated he would be going overseas, he felt that Great Barrington would be the only place in the United States where he would have any fixed ties and to which he would wish to return. On July 8, 1968, petitioner returned from overseas directly to Boston, Massachusetts, where he had his final hearing on his petition and took his oath of allegiance to the United States of America.

7. After July 8, 1968, petitioner immediately again went

overseas. He returned to the United States in 1969 for five months between assignments and had an apartment at 520 East 76th Street. He returned again in 1970 for an orientation course in New York City for six weeks; he returned again in 1971 and traveled in many states. Petitioner returned again and finally in 1973 and is now working for International Paper Company and is headquartered in New York City.

8. Petitioner filed a New York resident tax return covering only the period from January 1, 1967 to April 30, 1967. The deficiency is based upon the assertion that petitioner remained a domiciliary of New York or at least a statutory resident of New York for the entire year of 1967.

CONCLUSIONS OF LAW

Petitioner became a domiciliary of New York in 1963 and remained a domiciliary throughout the entire year of 1967.

A. Although petitioner came here in 1963 to work for a German corporation and not an American corporation, he in fact came in as an immigrant with the intention of making his permanent or continuous residence here (See 8 U.S.C., 1101(311)) and he has not shown sufficient remaining contacts with Germany to preserve that as a domicile.

B. While petitioner claims a Massachusetts domicile, it cannot be said on this record that his closest ties in 1967 were in that state. Even if the petitioner, in 1967, intended to be domiciled in Massachusetts it appears on this record that he did not take sufficient steps to carry out that intention.

Domicile implies a principal dwelling place, in fact, as well as an intent and a change in domicile requires evidence of an abandonment of the former domicile as well as the acquisition of a new domicile (See *Re Trowbridge's Estate* 266 NY 283). The facts here do not show such an equal contact with two places so that a statement of intent might be completely controlling (See *Restatement of Conflict of Laws*, 2nd, Section 20).

C. New York is not bound by a decision of a naturalization court as to either the residence or domicile of the petitioner. New York is not a party to such proceedings; the proceedings are not adversary in nature and most often representations of residence in such proceedings as they relate to individual states within the United States would not appear to be very important. Furthermore, any inquiry into the details of a naturalization proceeding would appear to be frustrated by the confidentiality of testimony taken at such proceedings.

D. In particular, in this case, it is not at all clear whether the naturalization court would have made any findings at all on residence which would be relevant for New York purposes. It should, of course, be noted that the naturalization law contains its own definition of "residence" (8 U.S.C. 1101(a)(33)) which is stated to mean "the place of general abode" and that in turn is defined to mean "principal, actual dwelling place, in fact, without regard to intent". It has been held that this concept is not equivalent to the concept of domicile (Chan Wing Cheung v. Hamilton, 298 F2d 459 at 461). While the naturalization


laws require (8 U.S.C. 1427(a); 1446(g)) that the alien have resided in the state in which the petition is filed for the six-month period immediately preceding the effective date of the filing of the naturalization petition, it would seem in this case that the naturalization petition was considered effective only in July, 1968, so that the six-month period would not include the tax year here in issue. Furthermore, the petitioner may have been exempted from the state residence requirement (See 8 C.F.R. 334.21) and such is likely since he was partially exempt from the five-year U.S. residence requirement by reason of provisions (See 8 U.S.C. 1427(b)) allowing for the absence of employees of American firms engaged in foreign trade or commerce.

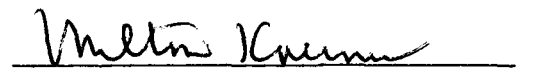
The deficiency is found to be correct and is due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

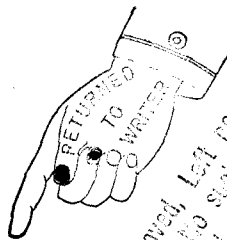
~~Max Kochman, C.P.A.~~
~~11 West 42nd Street~~
~~New York, New York 10036~~

Max Kochman, C.P.A.

11 West 42nd Street

New York, New York

10036



☐ Moved, Let no address
☐ No stop here
☒ Moved, New York, N. Y.
10036



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~NORMAN X. HALL, JR.~~ PRESIDENT
Mario A. Procaccino

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 15, 1974

Mr. Hans Bombeck
20 Ridley Park
Singapore 10, Singapore

Dear Mr. Bombeck:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HANS BOMBECK	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1967.	:	

Hans Bombeck filed a petition under section 689 of the Tax Law for a redetermination of a deficiency issued under date of November 30, 1970, in the amount of \$498.04 plus interest of \$78.42 for a total of \$576.46 for personal income tax under Article 22 of the Tax Law for the year 1967.

A hearing was duly held on September 13, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer.

The petitioner was represented by Max Kochman, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner became a domiciliary of New York and remained a domiciliary of New York during the latter part of 1967.

FINDINGS OF FACT

1. Petitioner was born and was raised in Germany. He remained a citizen of Germany until 1968.

2. In 1959, petitioner was employed by a United States corporation and after a training period of a year in the United States and was stationed in England.

3. In 1963, petitioner became an employee of the Habage Corporation, a German corporation and was assigned to their New York City office. His field of work was international marketing which necessitates a great deal of traveling in any job assignment. Any career advancement with Habage would have required him to return to Germany. He entered the United States at this time, however, as an immigrant. During this time, he had an apartment at 400 East 86th Street, New York City. He left Habage in May, 1966.

4. After leaving Habage, petitioner traveled in Europe and the United States and attended a summer season for executives at the University of Virginia.

During this time and before April, 1967, the petitioner still maintained his New York apartment. However, he spent most of his weekends in Great Barrington, Massachusetts. His closest friends lived in Great Barrington and he had no living relatives. He neither owned nor leased property in Massachusetts.

5. Petitioner was hired on January 1, 1967, by Pfizer International, Inc. He spent some time in a training program while he stayed at his New York apartment. He was sent to

Australia in April, 1967, and later to Japan. He gave up his New York City apartment at this time. He did not return to the United States until July 8, 1968.

6. In early 1967 and before leaving for Australia, petitioner made application to file a petition for naturalization as a citizen of the United States. Apparently, the preliminary investigation and interrogations on said application, the filing of the petition for naturalization and the preliminary examination and hearing on the petition occurred at about the same time. However, the petition would appear to have been effective only at the same time in 1968 when the five-year residence requirement would have been met. Although petitioner expected to be abroad, he intended to fulfill residence requirements for citizenship by reason of provisions of law (See 8 U.S.C., 1427(b)) allowing for the absences of employees of American firms engaged in foreign trade or commerce. All naturalization proceedings took place in Boston, Massachusetts, because petitioner claimed as his residence for the prior six months an address in Great Barrington, Massachusetts. As he contemplated he would be going overseas, he felt that Great Barrington would be the only place in the United States where he would have any fixed ties and to which he would wish to return. On July 8, 1968, petitioner returned from overseas directly to Boston, Massachusetts, where he had his final hearing on his petition and took his oath of allegiance to the United States of America.

7. After July 8, 1968, petitioner immediately again went

overseas. He returned to the United States in 1969 for five months between assignments and had an apartment at 520 East 76th Street. He returned again in 1970 for an orientation course in New York City for six weeks; he returned again in 1971 and traveled in many states. Petitioner returned again and finally in 1973 and is now working for International Paper Company and is headquartered in New York City.

8. Petitioner filed a New York resident tax return covering only the period from January 1, 1967 to April 30, 1967. The deficiency is based upon the assertion that petitioner remained a domiciliary of New York or at least a statutory resident of New York for the entire year of 1967.

CONCLUSIONS OF LAW

Petitioner became a domiciliary of New York in 1963 and remained a domiciliary throughout the entire year of 1967.

A. Although petitioner came here in 1963 to work for a German corporation and not an American corporation, he in fact came in as an immigrant with the intention of making his permanent or continuous residence here (See 8 U.S.C., 1101(311)) and he has not shown sufficient remaining contacts with Germany to preserve that as a domicile.

B. While petitioner claims a Massachusetts domicile, it cannot be said on this record that his closest ties in 1967 were in that state. Even if the petitioner, in 1967, intended to be domiciled in Massachusetts it appears on this record that he did not take sufficient steps to carry out that intention.

Domicile implies a principal dwelling place, in fact, as well as an intent and a change in domicile requires evidence of an abandonment of the former domicile as well as the acquisition of a new domicile (See *Re Trowbridge's Estate* 266 NY 283). The facts here do not show such an equal contact with two places so that a statement of intent might be completely controlling (See *Restatement of Conflict of Laws*, 2nd, Section 20).

C. New York is not bound by a decision of a naturalization court as to either the residence or domicile of the petitioner. New York is not a party to such proceedings; the proceedings are not adversary in nature and most often representations of residence in such proceedings as they relate to individual states within the United States would not appear to be very important. Furthermore, any inquiry into the details of a naturalization proceeding would appear to be frustrated by the confidentiality of testimony taken at such proceedings.

D. In particular, in this case, it is not at all clear whether the naturalization court would have made any findings at all on residence which would be relevant for New York purposes. It should, of course, be noted that the naturalization law contains its own definition of "residence" (8 U.S.C. 1101(a)(33)) which is stated to mean "the place of general abode" and that in turn is defined to mean "principal, actual dwelling place, in fact, without regard to intent". It has been held that this concept is not equivalent to the concept of domicile (Chan Wing Cheung v. Hamilton, 298 F2d 459 at 461). While the naturalization


laws require (8 U.S.C. 1427(a); 1446(g)) that the alien have resided in the state in which the petition is filed for the six-month period immediately preceding the effective date of the filing of the naturalization petition, it would seem in this case that the naturalization petition was considered effective only in July, 1968, so that the six-month period would not include the tax year here in issue. Furthermore, the petitioner may have been exempted from the state residence requirement (See 8 C.F.R. 334.21) and such is likely since he was partially exempt from the five-year U.S. residence requirement by reason of provisions (See 8 U.S.C. 1427(b)) allowing for the absence of employees of American firms engaged in foreign trade or commerce.

The deficiency is found to be correct and is due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER