

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL P. GRACE II and CORINE GRACE

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) 1962

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

State of New York
County of Albany

JANET MACK

, 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 7th day of January , 1976 , she served the within

Notice of Decision (~~on Redetermination~~) by (certified) mail upon Michael P. Grace II
and Corine Grace (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. and Mrs. Michael P. Grace II
c/o Walter J. Rockler, Esq.

Arnold & Porter
1229 19th Street N.W.
Washington, DC 20036

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~~
~~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

7th day of January , 1976

May L. Hoff

Janet Mack

STATE OF NEW YORK

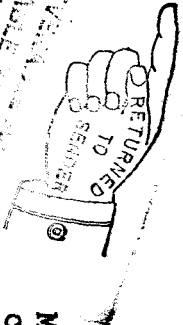
Department of Taxation and Finance

STATE CAMPUS

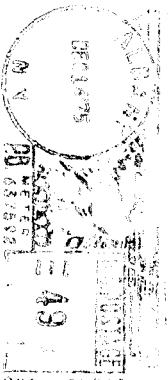
ALBANY, N. Y. 12227

Heaving
C. J. Blum

NOT DELIVERED
UNABLE TO LOCATE ADDRESSEE
SAN HOUSTON STATION
HOUSTON, TX 77032



Mr. and Mrs. Michael P. Grace, II
c/o Houston Savings Building
Fannin Street
Houston, Texas



CERTIFIED

No. 4028338

MAIL

NOT FOR TEXAS

DEPARTMENT OF TAXATION AND FINANCE

To Joyce

REMAILED

JAN 9 1976

1/7/76

From PAUL B. COBURN

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL P. GRACE, II
and
CORINE GRACE

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1962 .

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

State of New York
County of Albany

MARY GROFF

, 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 16th day of December , 1975 , she served the within

Notice of Decision ~~(xx DELETED xx)~~ by (certified) mail upon MICHAEL P. GRACE, II
and

CORINE GRACE

~~(xx DELETED xx)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. and Mrs. Michael P. Grace, II
c/o Houston Savings Building
Fannin Street
Houston, Texas

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 the)~~
~~xx~~ 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

16th day of December , 1975.

Janet Marsh

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MICHAEL P. GRACE, II
and
CORINE GRACE

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1962.

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

State of New York
County of Albany

MARY GROFF

, 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 **16th** day of **December**, 19 **75**, she served the within

Notice of Decision (~~on the same date~~) by (certified) mail upon **WALTER J. ROCKLER, ESQ.**

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: **WALTER J. ROCKLER, ESQ.**

Arnold & Porter
1229 Nineteenth Street, NW
Washington, D.C. 20036

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

16th day of **December**, 19**75**.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
JAMES H. TULLY, JR., PRESIDENT
MILTON KORNBERG

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-**222**

3850

DATED: Albany, New York
December 16, 1975

Mr. and Mrs. Michael P. Grace, II
c/o Houston Savings Building
Fannin Street
Houston Texas

Dear Mr. and Mrs. Grace:

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

Please take further notice that pursuant to
Section (x) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

NIGEL O. WRIGHT
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL P. GRACE II and CORINE GRACE :
for a Redetermination of a Deficiency : DECISION
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1962. :

Michael P. Grace II and Corine Grace, c/o Houston Savings Building, Fannin Street, Houston, Texas, filed a petition under section 689 of the Tax Law for the refund of personal income tax under Article 22 of the Tax Law for the year 1962.

Said refund is for \$10,000, the entire amount paid as estimated taxes. A claim for refund was denied on June 10, 1966.

A hearing was duly held on June 6, 1973, and December 18, 1974, at the offices of the State Tax Commission, 80 Centre Street, and Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer.

The petitioners were represented by Walter J. Rockler, Esq. of Arnold & Porter, of Washington, D.C.

The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by James A. Scott, Esq. and Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

ISSUES

I. The primary issue in this case is whether the petitioners changed their domicile during 1962 or whether they remained residents of New York for the whole year.

II. A second issue, if petitioners are found to have changed their domicile during 1962, is whether they had any taxable income over and above losses when income is computed on a short-year basis for 1962.

FINDINGS OF FACT

1. Mr. Grace was born and raised in Manhasset, Long Island, Mr. Grace went to St. Paul's School in Concord, New Hampshire, and St. Mark's School in Southboro, Massachusetts. He then went to Harvard College and to Notre Dame where he received an A.B. After college he made movies for a while but then entered the army. In 1945, Mr. Grace returned to Manhasset. He went to law school at Fordham and then again made movies in Europe for a short time. In 1950, Mr. Grace's father, Mr. Joseph P. Grace, died. Mr. Grace returned to the Manhasset estate and lived there with his uncle and his uncle's wife.

2. Mr. Grace acquired an interest in property called "Old Barry" in Bermuda. This was a five-acre plot with two houses which his maternal grandfather had left in trust. He stayed there from time to time.

3. Mr. Grace had, prior to 1954, business interests in movies, the theater and music publishing. In connection with these activities, in 1949 or 1950, Mr. Grace had acquired an office at 580 Fifth Avenue. Around 1953, he moved to an office located at 1619 Broadway at the corner of 49th Street. He kept his office until early 1962.

4. Mr. and Mrs. Grace were married in 1954 in South Bend, Indiana. They lived at the Manhasset estate until September, 1958, when the estate sold the property to a golf course. The furniture, in which Mr. Grace now had a one-half interest, was put in storage on Long Island where it remains. Mr. and Mrs. Grace have children born in 1955, 1957, 1961, 1963 and 1968.

5. In the summer of 1957, Mr. Grace operated the "Theater Under the Stars" at the Wollman Skating Rink in Central Park, New York City. He planned to operate it again in 1958, but it was cancelled in April. Mr. Grace lost money on his theatrical ventures. Around 1957, Mr. Grace became involved with "Live Theater in Canada", a corporation, with the hopes of bringing Canadian performances of Shakespeare to New York.

6. In August, 1957, petitioners acquired an apartment at 57 West 58th Street close to the Central Park theater. They had intended to live there because Mrs. Grace was pregnant and wanted to avoid traveling back to Manhasset. However, they could not move in right away. When they did move in, the apartment was furnished for business use in connection with Mr. Grace's business activities.

7. In September, 1958, after leaving Manhasset, petitioners moved into a hotel on 48th Street in New York City. Mrs. Grace identified this as the Midtown Hotel and stated they had a two and one-half room apartment there. At about the same time petitioners learned that their son had tuberculosis. They went to West Virginia to look for a home in the mountains. They did not, however, locate a suitable place. They returned to New York. In 1959, they lived for a time on a boat in the Hudson River.

8. In the fall of 1960, they moved to the Windsor Hotel at 100 West 58th Street, where they had a one-room apartment. They did not stay there very much, although in the fall of 1960 they voted in New York City. Also in 1960, petitioners tried to find a climate suitable to their son, Michael. They went to Bermuda where the children were in school; then to the island of Nassau and finally to Florida where the children were put in the Coral Gables School.

9. In January, 1961, petitioners moved to Coral Gables, Florida, and lived on a boat named "Miss Liz" in Dinner Key Marina, Miami Beach, Florida. In April, 1961, they moved to Pompano Beach with the boat and stayed until June.

10. In the summer of 1961, petitioners stayed at a house at Greenwood Lake in West Milford, New Jersey. The high elevation was suitable for the ill child. In September they purchased this property and they still own it.

11. In September, 1961, they moved back to Pompano Beach, stayed on the boat, and the child was entered in a private school.

12. In 1961, Mr. Grace had become active in the oil and gas business. In late 1961 or in early 1962, he acquired an office at Fidelity Union Towers in Dallas, Texas, and an office in Phoenix, Arizona. He started drilling in late 1961, in Ohio and Louisiana.

13(a). In January, 1962, petitioners rented a house in Pompano Beach on a month-to-month lease. They filed a certificate of residency in Florida. They stayed there until June, 1962, when Mr. Grace went to Dallas, Texas. Mr. Grace stayed in Dallas from June, 1962, at first in a motel, then in an apartment in a hotel and finally in September, 1962, he moved into a house. Mrs. Grace had gone to Bermuda but she joined him and they located and extensively renovated the house prior to moving in.

13(b). In 1962, Mr. Grace maintained bank accounts for personal business in Pompano Beach, Florida, and in Dallas and for bond trading in Chicago. His accounts in New York were family trust accounts at the Grace National Bank.

14(a). In early 1962, Mr. Grace vacated his office at Broadway. He had had no employees working there for some time.

14(b). In the fall of 1962, Mr. Grace vacated the apartment at 57 West 58th Street. For some time this had been maintained by Michael Todd, Esq. as attorney for Live Theater Canada for business use.

14(c). In 1962, Mr. Grace was in New York for about 25 days. This was on business. Mrs. Grace was in New York for about 12 days.

15(a). Petitioners had suffered for 1962 a net loss of \$90,000 as reported on their Federal tax return. This was the result of large amounts of income including over \$450,000 of dividends, \$330,000 of interest income, \$330,000 long-term capital gain and large amounts of deductions including contributions of \$300,000, interest paid of \$690,000 and professional fees \$80,000.

15(b). Petitioner has not provided a separate computation of income for any short period of 1962. Such a computation cannot be readily made from the information provided with the tax returns filed for the full year.

16. Since September, 1962, petitioners have lived entirely outside of New York State and have had homes in Dallas, Phoenix, and Houston.

CONCLUSIONS OF LAW

Petitioners maintained, in Florida and in Texas, residences which constitute a permanent place of abode outside of New York for the entire year of 1962. Their contact with the New York apartment was for business purposes only and cannot be considered to constitute the maintenance of a permanent place of abode in New York. They spent less than thirty days in New York in 1962.

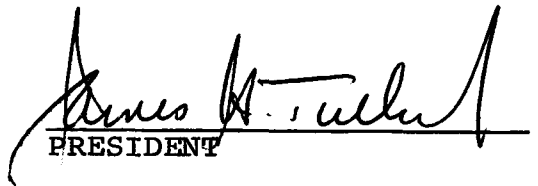
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They must therefore be considered to be nonresidents of New York during the year 1962.

The refund here in issue is due and is hereby granted.

DATED: Albany, New York
December 11, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER