

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUSSELL L. & HJORDIS P. LEWIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~XX~~ 22 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1968 and 1969.

State of New York
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Joseph H. Murphy, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph H. Murphy, Esq.
Hancock, Estabrook, Ryan,
Shove & Hust, Esqs.
One Mony Plaza
Syracuse, New York, 13202
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

20th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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RUSSELL L. & HJORDIS P. LEWIS

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For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (xx) 22 of the :
Tax Law for the Year(s) ~~xxxxxx~~ :
1968 and 1969.

State of New York
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Russell L. & Hjordis P. Lewis ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Russell L. Lewis
4294 Brigadoon Drive
St. Paul, Minn. 55112

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

20th day of August, 1976.

Carmen Mottolese

Janet Much



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

August 20, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Russell L. Lewis
4294 Brigadoon Drive
St. Paul, Minn. 55112

Dear Mr. & Mrs. Lewis:

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

Please take further notice that pursuant to
Section(3) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
:
of :
:
RUSSELL L. & HJORDIS P. LEWIS :
:
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1968 and 1969. :
:

DECISION

Russell L. and Hjordis P. Lewis filed a petition for the redetermination of a deficiency issued under date of April 26, 1971, in the amount of \$155.72 plus interest of \$18.97 for a total of \$174.69 for personal income taxes due under Article 22 of the Tax Law for the year 1968 and of a deficiency notice issued under date of January 29, 1973, in the amount of \$630.94 plus interest of \$105.56 for a total of \$736.50 for personal income taxes due under Article 22 of the Tax Law for the year 1969.

In lieu of a hearing, the petitioners submitted the petition to the Commission on the file of the Income Tax Bureau. The petitioners were represented by Joseph H. Murphy, Esq., of Hancock, Estabrook, Ryan, Shove & Hust of Syracuse, New York. The Income Tax Bureau is represented by Saul Heckelman, Esq. The said file has been duly examined and considered.

The issue in this case is whether petitioners were domicil-
iaries of New York during 1968 and 1969.

FINDINGS OF FACT

1. In 1967, petitioners resided at 12518 Iroquois Road, Palos Park, Illinois. In June, 1967 Mr. Lewis left his former employment and took a job with the St. Regis Paper Company as a technical writer. He was assigned to work primarily on a project at the company's plant at Doraville, Georgia, but in 1967 he also worked for a few days in the company's locations at Chicago, Illinois, and for 18 days at its plant at New City, Rockland County, New York. He stayed at motels when he was in either Georgia or New York. His wife and children stayed in Illinois until January 31, 1968, and he commuted back to Illinois on weekends. The project manager to whom he reported was located at New City, Rockland County, and he was paid from New City so as to keep his rate of salary confidential from the Georgia employees.

2. The statements of both Mr. Lewis and of an official of St. Regis Paper Company clearly show that the project Mr. Lewis was assigned to in Georgia had been only a development project prior to January, 1968 but at that time it became apparent that commercial production would be started for at least a year pending only formal budget approval in March, 1968 which was granted.

3. On January 1, 1968, petitioners rented a small house in New City, Rockland County. He moved his family and household goods there on January 31, 1968. On February 1, 1968, petitioner leased out his Illinois house for a one-year period. On April 12,

1968, he purchased a house at 3500 Bowling Green Avenue, Doraville, Georgia and moved into it completing the move by April 24, 1968. From the end of January, 1968 through March, 1968 Mr. Lewis worked for 29 days at the Nyack plant and the remainder of the year 1968 outside of New York mainly in Georgia.

4. Petitioners stayed at their Georgia home from April, 1968 through May of 1969. They had sold their Illinois home in January, 1969 and they sold their Georgia home on June 1, 1969. They filed a Georgia resident income tax return which showed the part of their income earned prior to June 1, 1969. From June 1, 1969, through March 15, 1970, petitioners resided at 23 Cindy Lane, Central Valley, New York, which they had purchased on May 28, 1969. Mr. Lewis continued to work for the St. Regis Paper Company and was assigned to their Nyack plant from June 17, 1969, through the end of the year.

5. Petitioners filed a 1968 New York return. Mr. Lewis' salary was allocated by reporting as New York income the amount of \$6,625.38, about one quarter of his annual salary and then further allocating that by the ratio of 29 days worked in New York over 83 days worked in the first four months of the year.

The deficiency notice for 1968 computes the tax on the amount of \$6,625.38 without further allocation on the basis that petitioners were residents in New York for the first four months of 1968.

6. Petitioners filed a New York return for 1969, showing

as New York income only the part of his salary earned from New York sources as shown on his employers withholding statements. His employer had withheld both New York State and New York City taxes and Georgia taxes. The deficiency notice for 1969 is computed on the basis of the entire salary for 1969, on the basis that petitioner had been a resident for the entire year.

7. On March 15, 1970, petitioners moved to 203 Muriel Boulevard, West St. Paul, Minnesota. They later moved to a different address in the same city.

DECISION

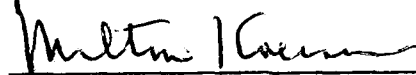
The petitioners have clearly shown that when they moved from Illinois in 1968 they had no intention of changing their domicile to New York. If a new domicile was acquired at that time, it would have been in Georgia. It follows that they were not domiciliaries of New York during the first part of 1969. It is uncontested that they became New York domiciliaries on June 1, 1969. They could have at no time been statutory residents of New York since in no single year were they in the state for more than 183 days. They are taxable, therefore, as nonresidents for 1968 and the first part of 1969 and as residents only from June 1, 1969, and thereafter.

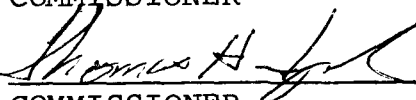
The returns are correct as filed and the deficiencies are cancelled in their entirety.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER