

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR H. SCHEHR and MARY E. SCHEHR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(22)~~ 22 of the :
Tax Law for the Year ~~(1970)~~ 1970.:

State of New York
County of Albany

Bruce Batchelor , 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 April , 19 77, ~~he~~ served the within
Notice of Decision by (certified) mail upon Arthur H. & Mary E.
Schehr (~~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. Arthur H. Schehr
7 Frederick Drive
Saratoga Springs, New York 12866

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 April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR H. SCHEHR and MARY E. SCHEHR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~1970~~ 1970.: :

State of New York
County of Albany

Bruce Batchelor , 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 April , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Harold W. Rosenstrauch
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harold W. Rosenstrauch, Esq.
100 State Street
Albany, New York 12207

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 April , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 14, 1977

TELEPHONE: (518) **457-1723**

**Mr. & Mrs. Arthur H. Schehr
7 Frederick Drive
Saratoga Springs, New York 12066**

Dear Mr. & Mrs. Schehr:

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

Please take further notice that pursuant to
Section(2) **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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ARTHUR H. SCHEHR and MARY E. SCHEHR	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1970.	:	

Petitioners, Arthur H. Schehr and Mary E. Schehr, 7 Frederick Drive, Saratoga Springs, New York 12866, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 0001510)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York 12227, on June 23, 1976 at 9:15 a.m. Petitioners appeared by Harold W. Rosenstrauch, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether petitioners' removal to Guam pursuant to a renewable two-year contract of employment, and their establishment of a place of abode on Guam, sufficiently established petitioners' change of domicile so as to change their status as New York State residents.

FINDINGS OF FACT

1. Petitioners, Arthur H. Schehr and Mary E. Schehr, timely filed a New York State resident income tax return for the year 1970, indicating thereon that the petitioners changed their resident status on July 16, 1970.

2. The taxpayers made an allocation of their total Federal income of \$17,649.00 to exclude \$11,308.00 alleged to have been earned outside the State of New York. Petitioners, Arthur H. Schehr and Mary E. Schehr, computed the income tax due New York State on the basis of \$6,341.00 that they considered as earned in New York State from January 1, 1970 through July 16, 1970.

3. As the result of an audit of the 1970 State income tax return, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes dated January 29, 1973. The notice stated that the Income Tax Bureau had determined that petitioners'

absence from New York State was due to a contractual agreement with the United States government for a definite period of employment, and had not effected a change in domicile for income tax purposes. A deficiency was assessed of \$400.34 plus interest.

4. The Income Tax Bureau determined that petitioners, Arthur H. Schehr and Mary E. Schehr, had not departed from New York State for Guam, Mariana Islands with the intention of removing their domicile to Guam.

5. The petitioners, Arthur H. Schehr and Mary E. Schehr, sold their Glens Falls, New York home, closed their bank accounts, took their children out of school, and moved to Guam in the Mariana Islands, in the Southwest Pacific in July, 1970. This removal was pursuant to a re-assignment of petitioner, Arthur H. Schehr, as an air controller for the Federal Aviation Agency. The agreement of employment signed by petitioner, Arthur H. Schehr, on May 17, 1970 obligated him to remain in overseas service for at least 24 months, and granted him relocation rights to the Eastern Region of the United States subject to the needs of the FAA service.

6. Petitioners, Arthur H. Schehr and Mary E. Schehr, rented living quarters in Guam, put their children in school,

opened a bank account, purchased an automobile and acquired drivers' licenses, and lived in Guam for two years. The Federal Aviation Agency did not renew the overseas assignment of petitioner, Arthur H. Schehr.

7. Petitioner, Arthur H. Schehr, requested re-assignment to the Eastern Region of the United States, specifying to the FAA five stations to which he preferred assignment. Two of these were in New York State.

8. The position of air traffic controller which the petitioner, Arthur H. Schehr, had occupied in Glens Falls, New York prior to his re-assignment to Guam, Mariana Islands, in 1970 was classified at grade GS-9. The assignment to Guam carried with it a promotion to grade GS-10. Upon re-assignment to Glens Falls, New York, the petitioner, Arthur H. Schehr, had to resume grade GS-9, to which controllers at that station were entitled.

9. Petitioners, Arthur H. Schehr and Mary E. Schehr, maintained a permanent place of abode in New York State from January, 1970 to July 15, 1970. They changed their abode to Guam, Mariana Islands for the balance of the tax year 1970 pursuant to a contract of employment for a definite period of two years between petitioner, Arthur H. Schehr, and the FAA.

CONCLUSIONS OF LAW

A. That for New York State income tax purposes, a resident individual is one who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State. (Tax Law, section 605(a)(1)) Petitioners admittedly spent more than six months of the taxable year of 1970 in New York State, and during that time had no permanent place of abode elsewhere.

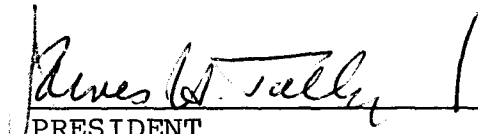
B. That the question of domicile is one of the intention of the petitioners to abandon their current one, and to establish a fixed and permanent home in another given place. Everything that petitioners did was as consonant with their moving to a new job location for a limited and definite stay (without giving up their then present domicile) as it was with their alleged intent to establish a new permanent home. (20 NYCRR 102.2(d)(2) Tax Law, section 605(a))

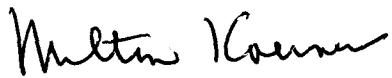
C. That the petitioners failed to establish by a preponderance of the credible evidence that they changed their domicile from New York State in 1970.

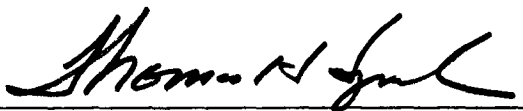
D. That the petition of Arthur H. Schehr and Mary E. Schehr is in all respects denied and the Notice of Deficiency dated January 29, 1973 is sustained. Interest shall be computed at the rate required by the Tax Law until the whole of the deficiency shall have been paid.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER