

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID and JUDITH SHAPIRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(21)~~ 22 of the :  
Tax Law for the Year ~~(1976)~~ :  
1973.

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Albert I. Coe, 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: Albert I. Coe, C.P.A.  
500 Old Country Road  
Garden City, New York 11530

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

24th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID and JUDITH SHAPIRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (8) 22 of the :  
Tax Law for the Year (8) 1973. :  
1973.

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon David and Judith Shapiro ~~(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. David Shapiro  
32 Pleasant Street  
Bethel, Connecticut 06801 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)~~ ~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~(representative of)~~ petitioner.

Sworn to before me this

24th day of August, 1977.

Marsina Donnini

Janet Mack



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

August 24, 1977

Mr. and Mrs. David Shapiro  
32 Pleasant Street  
Bethel, Connecticut 06801

Dear Mr. and Mrs. Shapiro:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty  
Hearing Examiner

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID and JUDITH SHAPIRO	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

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Petitioners, David and Judith Shapiro, 32 Pleasant Street, Bethel, Connecticut 06801, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1973. (File No. 12384). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1976 at 2:45 p.m. Petitioner, David Shapiro, appeared with his representative, Albert I. Coe, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Did the petitioners, David and Judith Shapiro, change their domicile during the year 1973?

FINDINGS OF FACT

1. Petitioners, David and Judith Shapiro, filed a joint New York State income tax nonresident return for the year 1973. On this return, they claimed to be residents of New York State from January 1, 1973 through July 1, 1973 and included the income received for this period on this nonresident return. They did not file a resident return for 1973.

2. On August 25, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioners, David and Judith Shapiro, in the sum of \$794.95, tax and interest due. The Income Tax Bureau asserted that the petitioners did not change their domicile and, therefore, the income received from all sources during 1973 was to be included in total New York income.

3. Petitioner, David Shapiro, M.D., a domiciliary of New York State, entered military service on July 1, 1973. On this date he moved with his wife from his New York residence to New Jersey where he resided on base in a one family home. This move was a temporary one, since the petitioners intended to move to the west coast upon the completion of petitioner, David Shapiro's military commitment. The petitioners did not intend to return to New York State.

4. Petitioners, David and Judith Shapiro, registered to vote in the State of New Jersey. They obtained New Jersey

drivers' licenses and registered their vehicles in New Jersey. Petitioner, David Shapiro, applied for a license to practice medicine in New Jersey.

CONCLUSIONS OF LAW

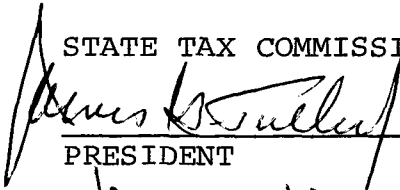
A. That the petitioners, David and Judith Shapiro's move to New Jersey, being a temporary one, did not show the intent necessary to establish a new domicile. Even though a person leaves his established domicile with the intention of never returning, such domicile continues until a new one is actually established.

B. That the petitioners, David and Judith Shapiro, did not change their domicile during 1973 and therefore are held to be New York State residents within the meaning and intent of section 605(a) of the Tax Law for the entire year and are subject to tax on income from all sources.

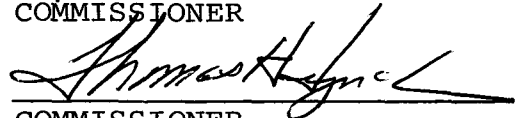
C. That the petition of David and Judith Shapiro is denied and the Notice of Deficiency issued August 25, 1975 is sustained.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER