

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Craig W. & Joanne M. Drachenberg :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1974. :

State of New York  
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Craig W. & Joanne M. Drachenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Craig W. & Joanne M. Drachenberg  
4681 N. 5th St.  
Lewiston, NY 14092

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Craig W. & Joanne M. Drachenberg :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Year 1974. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon David L. Roach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. David L. Roach  
Cohen, Swados, Wright, Hanifin, Bradford & Brett  
70 Niagara St.  
Buffalo, NY 14202

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  
26th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 26, 1979

Craig W. & Joanne M. Drachenberg  
4681 N. 5th St.  
Lewiston, NY 14092

Dear Mr. & Mrs. Drachenberg:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
David L. Roach  
Cohen, Swados, Wright, Hanifin, Bradford & Brett  
70 Niagara St.  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CRAIG W. and JOANNE M. DRACHENBERG	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioners, Craig W. and Joanne M. Drachenberg, 4681 North Fifth Street, Lewiston, New York 14092, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 15999).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on April 27, 1979 at 9:15 A.M. Petitioners appeared with David L. Roach, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile and residence from New York State to Canada during 1974.

FINDINGS OF FACT

1. Petitioners, Craig W. and Joanne M. Drachenberg, filed New York State Personal Income Tax Resident and Nonresident Returns for the year 1974 in which they indicated their period of New York State residence to be from January 1, 1974 to April 30, 1974.

2. The Income Tax Bureau held that petitioners were domiciliaries of New

York State for the entire year of 1974; therefore, all income earned during said year was taxable. On June 28, 1976, a Notice of Deficiency was issued for \$978.86 in personal income tax due, plus \$82.60 in interest, less overpayment shown on return of \$170.88, for a net due of \$890.48.

3. Petitioners were domiciliaries of New York State. Petitioner Craig W. Drachenberg volunteered and accepted an assignment from his employer, Department of the Treasury (U.S. Customs Services), as a customs inspector at Toronto International Airport, Canada. They sold their mobile home and moved to Canada on April 27, 1974, taking all their possessions with them.

4. Petitioner's initial assignment with his employer was to run to April 27, 1976, at which time he would be allowed to request an extension. Petitioners contended that they have no intention of returning to New York State and that he would seek an assignment either at the regional headquarters (Boston) or in one of the New England states upon completion of his assignment.

5. Petitioners further contended that they did not have to pay state tax based on a job description notice from the Department of the Treasury which stated the following:

"State Income Taxes - Statutes enacted by the various states provide that income actually earned in the state is subject to taxation. Therefore, employees stationed in Canada are not required to pay state income taxes on amounts earned during current tours of duty."

This was further demonstrated by the fact that the United State Government stopped withholding New York State tax upon petitioner commencing his employment in Canada.

6. Petitioners had, while in Canada, the following:

1) Canadian driver's licenses

- 2) Canadian car registration
- 3) Canadian bank accounts
- 4) Canadian credit cards
- 5) Canadian medical plan

#### CONCLUSIONS OF LAW

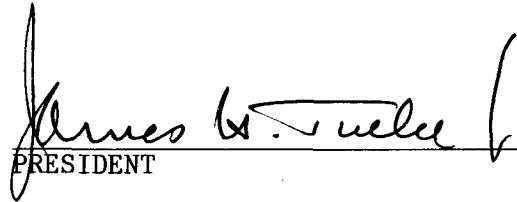
A. That a domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there [20 NYCRR 102.2(d)(2)]. Even though such person may, at some future time, seek a home elsewhere, (McCarthy v. McCarthy, 39 NYS2d 922). The question of what place shall be considered the domicile of a party is one of fact rather than of law, (Pignatelli v. Pignatelli, 8 NYS2d 10). Evidence must be clear and convincing to establish required intention to effect a change in domicile. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Less evidence is required to establish a change of domicile from one state to another than from one nation to another, (Matter of Newcomb, 192 NY 238; Matter of Bodfish v. Gallman, 50 AD 2d 457).

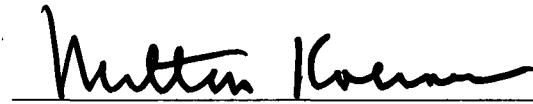
B. That petitioners have failed to sustain the burden of proof required to show that they were domiciled in any place other than New York State during 1974, or that they intended to abandon their New York domicile when he went to work in Canada. Therefore, they are considered to have been domiciled in New York State during 1974. They are taxable as residents of New York State for 1974 in accordance with section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), since (1) they maintained a permanent place of abode in New York State, (2) they did not maintain a permanent place of abode outside New York State for the entire taxable year and (3) they spent in the aggregate more than 30 days in New York State during 1974.

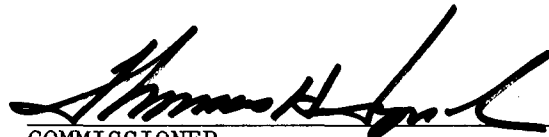
C. That the petition of Craig W. and Joanne M. Drachenberg is denied and the Notice of Deficiency issued June 28, 1976, is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
NOV 26 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER