

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph P. & Patricia Kennedy :
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 1972. :

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 Joseph P. & Patricia Kennedy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. & Patricia Kennedy
143 Huntleigh Circle
Buffalo, NY 14226

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 :
Joseph P. & Patricia Kennedy :
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 1972. :

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 Raymond A. Mercer 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. Raymond A. Mercer
R. A. Mercer & Co.
384 Ellicott Square Bldg.
Buffalo, NY 14203

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 Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph P. & Patricia Kennedy :

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 1973. :

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 Joseph P. & Patricia Kennedy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. & Patricia Kennedy
143 Huntleigh Circle
Buffalo, NY 14226

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.

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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

Joseph P. & Patricia Kennedy :

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 1973. :

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 Raymond A. Mercer 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. Raymond A. Mercer
R. A. Mercer & Co.
384 Ellicott Square Building
Buffalo, NY 14203

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 Knapp

Jay Vredenburg

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

November 26, 1979

Joseph P. & Patricia Kennedy
143 Huntleigh Circle
Buffalo, NY 14226

Dear Mr. & Mrs. Kennedy:

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
Raymond A. Mercer
R. A. Mercer & Co.
384 Ellicott Square Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
JOSEPH P. KENNEDY and PATRICIA KENNEDY	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

Petitioners, Joseph P. and Patricia Kennedy, 143 Huntleigh Circle, Buffalo, New York 14226, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 14497 and 15824).

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 26, 1979 at 9:15 A.M. Petitioner Joseph P. Kennedy appeared with Raymond A. Mercer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner Joseph P. Kennedy changed his domicile and residence from New York State to Canada during the period September 1, 1972 to April 12, 1973.

FINDINGS OF FACT

1. Petitioners, Joseph P. Kennedy and Patricia Kennedy, filed a joint 1972 New York State Resident Income Tax Return on which they subtracted as a New York State modification, wages earned in Canada in the amount of \$12,820.00.

2. Petitioner Joseph P. Kennedy filed married-filing separate returns for 1973. He filed a New York State Nonresident Income Tax Return for the

period January 1, 1973 to April 11, 1973 and a resident return for the remainder of that year.

3. On July 24, 1973, the Income Tax Bureau issued a Statement of Audit Changes against Joseph P. and Patricia Kennedy for 1972. On October 28, 1975, the Bureau issued a Statement of Audit Changes against Joseph P. Kennedy for 1973. The statements of audit changes held that the petitioners were domiciled in New York State and therefore taxable as residents on all income wherever earned. A Notice of Deficiency for 1972 was issued on January 26, 1976 in the amount of \$1,882.51 personal income tax, plus \$364.01 interest, less \$143.81 overpayment shown on return, for a total sum of \$2,107.71. On June 28, 1976, a Notice of Deficiency was issued for 1973 in the amount of \$1,588.35 personal income tax, plus interest of \$189.71, less overpayment shown on return of \$439.97, for a total due of \$1,338.09.

4. Prior to September 1972, petitioners were domiciliaries of New York State. On September 1, 1972, petitioner Joseph P. Kennedy accepted a management position with a new employer located in Toronto, Ontario, Canada. This was after he voluntarily terminated his executive position with a New York State employer for whom he had worked nineteen years.

5. Petitioner Joseph P. Kennedy took some of his personal belongings and moved into a furnished six month sublet apartment in Canada. He continued to contribute to the support of his family and visited them on weekends. Mr. Kennedy's stated intention was to move the family to Canada in June or July of 1973 after the children completed the school year. The petitioners then made inquiries with moving companies. They also made inquiries at the Canadian consulate as to the requirements and procedures of immigrating to Canada. Other preparatory steps were taken such as looking at available real estate in Canada and medical requirements that would be needed for the family.

6. An employment agreement was in the process of being drawn up between Mr. Kennedy and his Canadian employer, however, this agreement was never executed. In April 1973, for business reasons, the petitioner terminated his employment in Canada and returned to his home in New York. On returning, he worked as a consultant to his previous New York employer in the setting up of an automobile leasing operation.

7. During the years in question, the petitioner's wife and family continued to maintain and reside in their New York residence. The petitioners did not list their New York home for sale with a realtor, but tried to sell the house on their own.

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 to establish required intention to effect a change in domicile must be clear and convincing. 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 AD2d 457). That petitioners have failed to establish by a preponderance of evidence that petitioner Joseph P. Kennedy changed his domicile from New York State to Canada. Prior to returning to New York, his acts might be found to be preparatory to the establishment of a new domicile, but never completed.

B. That petitioner Joseph P. Kennedy was a resident of New York State during 1972 and 1973 within the meaning and intent of section 605(a)(1) of the Tax Law. He was domiciled in and spent more than thirty days in New York State during the years at issue.

C. That the petitions of Joseph P. and Patricia Kennedy are denied and the notices of deficiency issued January 26, 1976 and June 28, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER