

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Jerry J. & Joan Campana :  
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 1970. :

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 6th day of June, 1980, he served the within notice of Decision by certified mail upon Jerry J. & Joan Campana, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerry J. & Joan Campana  
4280 N. Ocean Blvd.  
Ft. Lauderdale, FL 33308  
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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Jerry J. & Joan Campana  
4280 N. Ocean Blvd.  
Ft. Lauderdale, FL 33308

Dear Mr. & Mrs. Campana:

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

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
JERRY J. CAMPANA and JOAN CAMPANA : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Year 1970. :

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1977 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (James J. Morris, Jr., Esq., of counsel).

Whether the departure of petitioners, Jerry J. Campana and Joan Campana, from New York State pursuant to a change of assignment of petitioner Jerry J. Campana, occasioned by reason of his employer's discontinuance of its main office in New York State, and the establishment of a place of abode in Florida by said petitioners, constituted a change of domicile of said petitioners so as to change their status as New York State resident individuals.

FINDINGS OF FACT

1. Petitioners, Jerry J. Campana and Joan Campana, filed neither New York State resident nor nonresident income tax returns for the year 1970, but jointly filed a New York State Resident Income Tax Return for the year 1969, listing their address as 5 Engineers Road, Roslyn Harbor, New York.

2. Petitioners jointly filed with the Internal Revenue Service of the United States an individual income tax return for the year 1970, listing their address at 4280 North Ocean Boulevard, Fort Lauderdale, Florida.

3. On December 26, 1972, the Audit Division issued a Statement of Audit Changes against petitioners, imposing income tax for 1970 of \$8,280.91, plus penalty pursuant to sections 685(a)(1) and (2) of the Tax Law, and interest. Accordingly, a Notice of Deficiency was issued November 25, 1974 against petitioners for \$8,280.91 plus updated penalties and interest.

4. On or about June 4, 1975, the Income Tax Bureau allowed certain itemized deductions of \$16,727.42 claimed by petitioners consistent with their Federal return for 1970, thereby cancelling \$2,343.24 of petitioners' basic tax and accordingly reducing penalty and interest as originally asserted on the November 25, 1974 Notice of Deficiency.

5. Prior to January 1, 1970, petitioners were domiciliaries of the State of New York, maintaining a permanent residence or place of abode at 5 Engineers Road, Roslyn Harbor, New York.

6. Petitioner Jerry J. Campana began his employment with Radice Realty and Construction Corp. (hereinafter "Radice Corp") in late 1968 as a consultant. After three months, said petitioner became vice-president of that firm in charge of various construction sites in the states of New York, Florida and Wisconsin. At that time, Radice Corp. had its main office in White Plains, New York and a branch office in Fort Lauderdale, Florida.

7. Since late 1968, petitioner Jerry J. Campana maintained a residence in Florida, staying temporarily at a hotel paid for by Radice Corp. Thereafter, said petitioner was provided with an apartment, without cost to him, by Radice Corp. In early 1969, petitioner, Joan Campana, joined her husband in Florida.

8. In late 1969, petitioner Jerry J. Campana was advised by Radice Corp. that it was closing its main office in White Plains and that, if said petitioner desired to continue his employment with the company, he must work full time in Florida. At no time did said petitioner enter into a written contract with Radice Corp.

9. In the latter part of 1969, petitioners removed their personal belongings to their Florida residence, but their furniture remained at the Roslyn Harbor home, which they maintained throughout 1970 (and, indeed, still owned and maintained at the time of the hearing in this proceeding).

10. Commencing January 1, 1970, petitioner Jerry J. Campana rented an apartment located at 2801 Palm Aire Drive, Pompano Beach, Florida from his wife's cousin, for the period of one year. He occupied this apartment during 1970. There was no written lease executed with respect to this apartment.

11. In or about December, 1970, Radice Corp. completed construction of condominium apartments at North Ocean Boulevard, Fort Lauderdale, Florida. On or about December 18, 1970, petitioners, Jerry J. Campana and Joan Campana, took possession of an apartment at that address. There was no formal contract of sale but the warranty deed for the condominium apartment was executed February 22, 1971 and recorded March 2, 1971 in the Official Records Book for Broward County, Florida.

12. The W-2 form annexed to the 1970 Federal tax return discloses that petitioner Jerry J. Campana resided at 4280 North Ocean Boulevard, Fort Lauderdale, Florida, but petitioners, Jerry J. Campana and Joan Campana, executed a Declaration of Domicile and Citizenship, sworn to February 18, 1975 and recorded in the Official Records Book for Broward County, Florida February 21, 1975, which recites that said petitioners were formerly residents of 5 Engineers Road, Roslyn Harbor, New York and that they changed their domicile to and were legal residents of Florida since December 18, 1970 (the date when they took occupancy of their condominium apartment at North Ocean Boulevard). Moreover, said petitioners did not execute an Application for Tax Exemption (Homestead) in the State of Florida until February 7, 1975.

13. From April to November, 1970, petitioner Joan Campana returned to New York State for health reasons, residing at the Roslyn Harbor Home. During the other months of 1970, said petitioner made regular weekend trips to New York State with her husband, residing on each occasion at the Roslyn Harbor home.

14. During the entire year 1970, petitioner Jerry J. Campana made frequent and regular weekend trips to New York State because of his wife's illness and son's marital problems, arriving late Friday night and departing early Monday mornings and residing on each occasion at the Roslyn Harbor home. While said petitioner could offer no evidence in the form of a diary or other records with respect to the number of days spent within and without the State of New York during 1970, he estimated that such weekend trips numbered about thirty.

15. By application dated April 11, 1970, the New York accountant representing petitioners, Jerry J. Campana and Joan Campana, filed on their behalf an Application For Extension of Time to File their 1969 U.S. individual income tax return, stating their address to be 5 Engineers Road, Roslyn Harbor, New York. This same accountant prepared said petitioners' 1970 Federal income tax return. Indeed, said petitioners have never retained a Florida accountant.

16. During 1970, petitioners owned two cars, one of which was registered in New York State; said petitioners maintained their New York State operators licenses; said petitioners did not vote in New York State or Florida (but they voted in New York State in both 1972 and 1976); said petitioners received mail at both their Roslyn Harbor and Florida residences; said petitioners contributed to local churches in both New York State and Florida; said petitioners terminated their memberships in all New York State clubs and organizations with one exception and joined social clubs and organizations in Florida.

17. Petitioners did not file resident and/or nonresident income tax returns in New York State for 1970 in accordance with the advice of their accountant on the ground that such returns were not legally required.

#### CONCLUSIONS OF LAW

A. That sections 601 and 611 of the Tax Law impose a tax, inter alia, on all New York State resident individuals as defined in section 605(a) of the Tax Law.

B. That, to change one's domicile, there must be an intent to make the new location a fixed and permanent home, coupled with an actual acquisition of a residence in the new locality. Klein v. State Tax Comm., 55 A.D.2d 982, 390 N.Y.S.2d 686 (3rd Dept. 1977), aff'd., 43 N.Y.2d 812, 402 N.Y.S.2d 396 (1977); Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138 (3rd Dept. 1976).

C. That, while the evidence to establish the requisite intention to effect a change of domicile must be clear and convincing, Klein v. State Tax Comm., 55 A.D.2d at 984, 390 N.Y.S.2d at 688; Bodfish v. Gallman, 50 A.D.2d at 458, 378 N.Y.S.2d at 140, the question is not whether the taxpayer intends to leave New York forever, but whether he intends to make the new location his "permanent home...with the range of sentiment, feeling and permanent association with it". Starer v. Gallman, 50 A.D.2d 28, 31, 377 N.Y.S.2d 645, 648 (3rd Dept. 1975).

D. That any period of residence, however short, even a day, when coupled with the requisite intent is sufficient to establish a new domicile. Klein v. State Tax Commission,, A.D.2d at 984, 390 N.Y.S.2d at 688, citing Dupuy v. Wurtz, 53 N.Y. 566 (1873).

E. That, if domicile is established in New York State, there is a basis for taxation therein, and presence in this State is not necessary in order for such tax to be assessed against the taxpayer. Starer v. Gallman, 50 A.D.2d at 31, 377 N.Y.S.2d at 648.

F. That domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests on the party who alleges a change. Bodfish v. Gallman, 50 A.D.2d at 459, 378 N.Y.S.2d at 141.

G. That petitioners, Jerry J. Campana and Joan Campana, did not sustain their burden of proof with respect to a change of domicile from New York State to Florida for 1970 and, consequently, said petitioners were resident individuals within the meaning and intent of section 605(a) of the Tax Law.

H. That the petition of Jerry J. Campana and Joan Campana is denied in all respects and the Notice of Deficiency issued November 25, 1974, as modified and amended on June 4, 1975 (Finding of Fact "4" supra), is sustained.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION

James W. Tully  
PRESIDENT

Thomas H. Spill  
COMMISSIONER

Francis R. Kolmg  
COMMISSIONER