

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Joyce Elbert

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Joyce Elbert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joyce Elbert  
c/o Arthur B. Greene  
New York, NY 10017

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  
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Joyce Elbert :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
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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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Arthur B. Greene 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. Arthur B. Greene  
230 Park Ave.  
New York, NY 10017

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  
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

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

January 11, 1980

Joyce Elbert  
c/o Arthur B. Greene  
230 Park Ave.  
New York, NY 10017

Dear Ms. Elbert:

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  
Arthur B. Greene  
230 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOYCE ELBERT	:	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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Petitioner, Joyce Elbert, c/o Arthur B. Greene, CPA, 230 Park Avenue, New York, New York 10017, 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. 17691).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 1, 1978 at 2:45 P.M. Petitioner appeared by Arthur B. Greene, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner, a United States citizen, in making Spain her only place of abode in 1974, thereby effected a change of her New York domicile, so as to cease being a New York resident individual within the meaning of Section 605(a)(1) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Joyce Elbert, filed a New York State Income Tax Nonresident Return for the year 1974 on which she indicated her home address to be in Alicante, Spain, with a mailing address c/o her accountant in New York City. She reported Federal income of \$53,946.06 and reported New York State income as "none".

2. On November 18, 1975, a Statement of Audit Changes was issued against petitioner in the amount of \$6,004.41, plus interest, on the grounds that she was domiciled in New York State and spent more than 30 days in the State and was thus a resident of the State for tax purposes.

On November 22, 1976, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$6,004.41, plus interest.

3. Petitioner, Joyce Elbert, was born a United States citizen in the City of New York, where she resided until April of 1973.

4. Petitioner gave up her leased apartment at 185 East 85th Street, New York, New York, in April of 1973, maintaining no residence or permanent place of abode in New York State or anywhere else within the United States during the period herein involved.

5. Petitioner moved to Spain in April of 1973 where she rented an apartment from April through July of that year. In July of 1973, petitioner purchased an apartment in Spain in which she resided during the period herein involved.

6. Petitioner, a professional writer with several published novels to her credit, retained a New York literary agent during the period herein involved, as well as other agents elsewhere in the world.

7. Petitioner has conceded that she was a New York domiciliary through 1973.

8. Petitioner has conceded that she spent 53 days in New York in 1974.

9. During the period herein involved, petitioner traveled on a United States passport.

10. Petitioner filed United States income tax returns during the period herein involved.

11. Petitioner has neither renounced her United States citizenship, nor taken any positive steps to obtain Spanish citizenship.

12. Petitioner claimed no United States domicile during the period herein involved.

CONCLUSIONS OF LAW

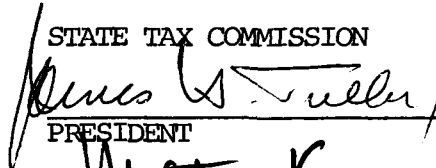

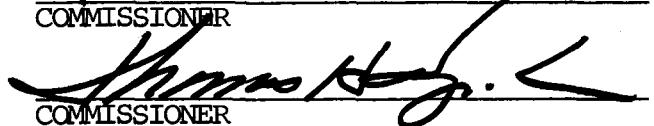
A. That petitioner, Joyce Elbert, was a domiciliary of New York State during 1974, even though her only place of abode for that year was in Spain. There is a stronger presumption against change of domicile to a foreign country than to another state. Klein v. State Tax Commission, 55 AD2d 982 aff'd 43 NY 2d 812 (1977).

B. That petitioner, a New York domiciliary who spent more than thirty days in the aggregate in New York State during 1974, is a resident individual within the meaning of Section 605(a) (1) of the Tax Law.

C. That the petition of Joyce Elbert is denied and the Notice of Deficiency issued November 22, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER