

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jose A. & Maria A.P. Mestre :

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 1972. :

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 April, 1980, he served the within notice of Decision by certified mail upon Jose A. & Maria A.P. Mestre, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jose A. & Maria A.P. Mestre  
86 Rte. de Florissant  
1206, Geneva, Switzerland

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 April, 1980.

Joanne Knapp

[Signature]

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

April 11, 1980

Jose A. & Maria A.P. Mestre  
86 Rte. de Florissant  
1206, Geneva, Switzerland

Dear Mr. & Mrs. Mestre:

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 OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSE A. and MARIA A.P. MESTRE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

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Petitioners, Jose A. and Maria A.P. Mestre, 86 Route de Florissant, 1206 Geneva, Switzerland, 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 1972 (File No. 12254).

On October 10, 1978, petitioners, Jose A. and Maria A.P. Mestre, advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Whether petitioners changed their domicile from New York to Switzerland in 1972.

FINDINGS OF FACT

1. Petitioners, Jose A. and Maria A.P. Mestre, timely filed a New York State Income Tax Resident Return for 1972 on which they indicated their period of New York State residence from January 1, 1972 to June 20, 1972.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, asserting personal income tax of \$1,439.65, plus interest of \$86.66 and less the overpayment claimed of \$849.75, for a net of \$676.56. The notice was issued on the grounds that petitioner's domicile did not change during said year; therefore, they were taxable as New York residents on their

total income from all sources to the extent such income was reportable for Federal income tax purposes.

3. Petitioner Jose A. Mestre accepted the position of general manager of Business International S.A., in Geneva, Switzerland, which is a wholly-owned subsidiary of Business International Corporation, 757 Third Avenue, New York, New York. This position was of an indefinite duration.

4. Petitioners sold their house in New York for \$60,000.00 and purchased a residence in Switzerland for \$131,575.00 and maintained no permanent place of abode in New York State after June 30, 1972. The petitioners, being foreigners, were required to petition the Federal Department of Justice and Police and receive a favorable resolution of their petition before enabling them to purchase real property in Switzerland. The decision of the Federal Department of Justice and Police found them domiciled in Switzerland from July of 1972.

5. On July 5, 1972, the petitioners received a residence permit from the Geneva Population Office, which is extremely difficult to obtain in Switzerland except where the party's intention is to live there permanently.

6. The petitioners and their children had previously made a foreign domicile change from Cuba to United States.

7. Petitioners paid Swiss taxes on income.

8. The petitioners are United States citizens who entered Switzerland in 1972 on a renewable yearly visa.

#### CONCLUSIONS OF LAW

A. That petitioners have established by a preponderance of the evidence that they changed their domicile from New York to Switzerland in 1972.

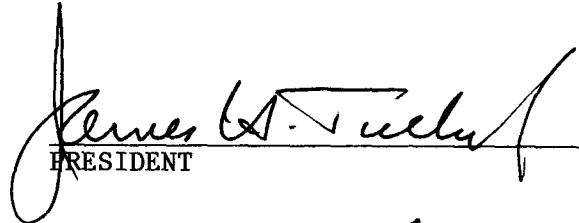
B. That the petition of Jose A. and Maria A.P. Mestre is granted and the Notice of Deficiency issued March 31, 1975 is cancelled. The Audit Division is directed to recompute petitioners' 1972 tax liability in accordance with

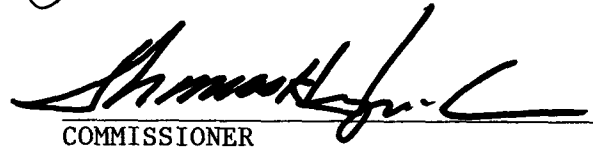
the provisions of section 654 of the Tax Law and authorize refund of any resulting overpayment.

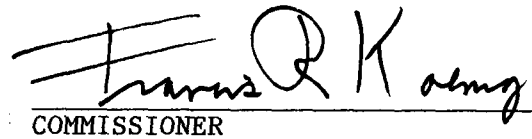
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER