

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Ellen Schanzer :
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 1968. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Bernard & Ellen Schanzer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Ellen Schanzer
525 Irvington Ave.
Elizabeth, NJ

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bernard & Ellen Schanzer :
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 1968. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Henry I Schanzer 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. Henry I Schanzer
29 Brookfall Rd.
Edison, NJ 08817

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Bernard & Ellen Schanzer
525 Irvington Ave.
Elizabeth, NJ

Dear Mr. & Mrs. Schanzer:

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
Henry I Schanzer
29 Brookfall Rd.
Edison, NJ 08817
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD SCHANZER and ELLEN SCHANZER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

Petitioners, Bernard Schanzer and Ellen Schanzer, 525 Irvington Avenue, Elizabeth, New Jersey, 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 1968 (File No. 13882).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 8, 1979 at 1:15 P.M. Petitioners appeared by Henry I. Schanzer, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciled in, and residents of, the State of New York during the entire taxable year 1968.

II. Whether the deficiency should be dismissed on the ground of laches.

FINDINGS OF FACT

1. Petitioners, Bernard Schanzer and Ellen Schanzer, timely filed a New York State Income Tax Resident Return for the year 1968 wherein they reported their period of New York residence as October 1, 1968 to December 31, 1968. Accordingly, they reduced their total income by an amount which they

contended was earned in the State of Illinois while they were residents of said state during the balance of the taxable year.

2. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes wherein petitioners were held taxable as residents of New York State for the entire taxable year 1968 on the basis that: "Temporary removal from New York State for the purpose of fulfilling your military obligation does not constitute a change of residence". Said statement was issued since petitioners failed to respond to an inquiry letter initially mailed to them on November 30, 1970, and subsequently remailed on March 3, 1971. Accordingly, a Notice of Deficiency was issued against petitioners on March 20, 1972, asserting additional personal income tax of \$477.16, plus interest of \$83.89, for a total due of \$561.05. (It should be noted that due to an apparent typographical error, the amount of interest recorded on the Notice of Deficiency appears as \$3.89, rather than \$83.89 per the aforementioned Statement of Audit Changes.)

3. Petitioners contended that they were bona fide domiciliaries and residents of the State of Illinois from January 1 through September 30, 1968 and that on removal from New York State, prior to the year at issue herein, their intent was not to return.

4. In March, 1965, petitioners, both long-standing residents of New York State, were married. Subsequently, they moved to an apartment located at 100 Remsen Street, Brooklyn, New York.

5. In October, 1966, petitioner Bernard Schanzer enlisted in the United States Air Force to serve as a physician for a two year period. On enlistment, he was assigned to Scott Air Force Base in the State of Illinois, where he remained stationed until termination of his service in September, 1968.

6. Petitioner Ellen Schanzer remained in New York for the purpose of completing her training as a physician. Subsequently in June, 1967, on completion of said training, she gave up the New York apartment and moved to Illinois to join her husband. Petitioners rented an apartment located off base at 4 Potomac Drive, Caseyville, Illinois, which, geographically, was located between Fort Scott and St. Louis, Missouri. This location was chosen since petitioner Ellen Schanzer had received a fellowship award at St. Louis University.

7. Petitioners resided in Caseyville, Illinois until termination of Bernard Schanzer's Air Force service in late September, 1968.

8. In October, 1968, petitioners moved back to the State of New York. After spending a few weeks living with petitioner Ellen Schanzer's parents, they rented their own apartment at 142-10 Hoover Avenue, Jamaica, New York, where they remained throughout the balance of the taxable year at issue.

9. Petitioner Ellen Schanzer testified that while she and her husband were living in Illinois, they looked for a place to practice medicine on completion of Bernard Schanzer's Air Force duty, and that New York State was one of the locations considered.

10. Petitioners contended that the following actions served as indicia of the fact that they changed their domicile and residence to the State of Illinois.

- a. They closed all New York bank accounts on removal from New York State.
- b. They moved all their personal effects from New York to Illinois.
- c. They registered their automobiles in Illinois.
- d. They voted by absentee ballot in Illinois, and
- e. Petitioner Ellen Schanzer received a medical license from the State of Missouri.

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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time [20 NYCRR 102.2(d) (2)].

The fact that removal from New York State to the State of Illinois was solely the result of military assignment, coupled with the fact that petitioners, while in Illinois, were searching for a location, other than Illinois, to set up professionally, leads to the strong inference that petitioners had no intent of remaining permanently in the State of Illinois. Accordingly, petitioners were domiciled in the State of New York during the entire taxable year 1968.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State [20 NYCRR 102.2(b)].

Since petitioners did not satisfy the aforementioned requirements during the taxable year 1968, they are, therefore, residents of New York State during the entire taxable year at issue.

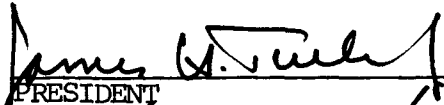
C. That since the record in the instant case shows no undue delay by the State Tax Commission in instituting action, the remedy of laches claimed by petitioners is unfounded.


D. That the petition of Bernard Schanzer and Ellen Schanzer is denied and the Notice of Deficiency dated March 20, 1972 is sustained, together with such additional interest which is lawfully owing.

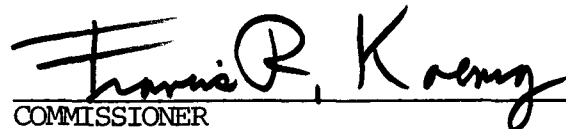
DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1980


PRESIDENT


COMMISSIONER


COMMISSIONER