

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
David & Estella Schulman :  
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 Years 1973 & 1974. :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon David & Estella Schulman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David & Estella Schulman  
Juliana Airport  
St. Maarten, Netherland Antilles  
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  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

David & Estella Schulman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1973 & 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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Mark L. Schulman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

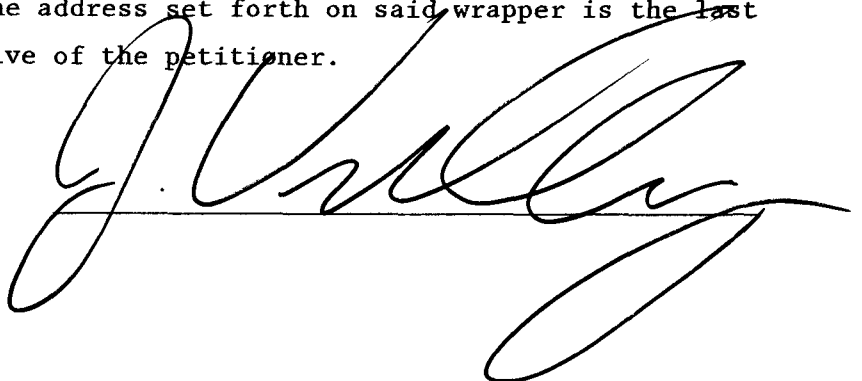
Mr. Mark L. Schulman  
P.O. Box 945  
Monticello, NY 12701

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

David & Estella Schulman  
Juliana Airport  
St. Maarten, Netherland Antilles

Dear Mr. & Mrs. Schulman:

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  
Mark L. Schulman  
P.O. Box 945  
Monticello, NY 12701  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
DAVID SCHULMAN and ESTELLA SCHULMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

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Petitioners, David Schulman and Estella Schulman, Juliana Airport, St. Maarten, Netherlands Antilles, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973 and 1974 (File Nos. 22775 and 20408).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 13, 1978 at 9:15 A.M. Petitioners appeared by Mark L. Schulman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioners were resident individuals of New York State during 1973 and 1974.

FINDINGS OF FACT

1. In 1974 petitioners, David Schulman and Estella Schulman, timely filed a combined New York State income tax return for 1973, wherein they claimed a refund of \$213.94. In 1975, a combined New York State income tax return for 1974 was timely filed, wherein they claimed that a balance was due of \$14.03. For the years in issue, petitioners claimed nonresident status; therefore, they excluded part of their gross income.

2. On March 5, 1975 and on October 12, 1977, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, wherein their tax liability was recomputed as if they were New York State residents for 1973 and 1974. Accordingly, on December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency for 1973 in the amount of \$794.93, plus interest of \$73.53, for a total of \$868.46, less the overpayment claimed by petitioners on their return of \$213.94; thus, the net amount due for 1973 is \$654.52. On January 16, 1978, the Income Tax Bureau issued a Notice of Deficiency for 1974 against Estella Schulman for \$860.15, plus interest of \$201.31, for a total of \$1,061.46, and against David Schulman for \$1,000.18, plus interest of \$234.08, for a total of \$1,234.26.

3. Petitioners resided at 14 Lake Street, Monticello, New York, for approximately twenty-one years. They operated a retail store which sold various sundries. On September 21, 1971, they sold their residence in Monticello, New York.

Petitioners had vacationed in St. Maarten, Netherland Antilles since 1965. David Schulman found the climate beneficial to his severe respiratory ailment. Between 1971 and 1974, they had spent eight months of each year there. In 1968 petitioners leased a lot for sixty years on St. Maarten and eventually built a home thereon, as required by said lease. The home was completed in 1971. In 1969, petitioners applied for and were granted an "authorization for sojourn" to St. Maarten, N.A., which was valid until March, 1972. They listed their address abroad as 14 Lake Street, Monticello, New York, U.S.A., their nationality as American, their passport as American, and its country of issue as New York (sic). Residency cards listed their nationality as American. They filed income tax returns in St. Maarten, but did not have to pay any tax. Petitioners were not entitled to vote in St. Maarten; however,

petitioners did submit as evidence two voting registration cards for the State of Florida dated July 18, 1974. No other evidence of Florida residence was submitted. Petitioners had no intention of giving up their U.S. citizenship. They filed U.S. Federal income tax returns for 1973 and 1974.

4. Petitioners own a summer cottage on Masten Lake in New York State, which they occupied during the summer months of June, July and August of 1973 and 1974. David Schulman and Estella Schulman have a joint bank account with the Bank of New York, Wurtsboro branch, possess New York State (as well as St. Maarten) driver's licenses and lease a post office box which is listed as Box N, Kiamesha Lake, New York.

#### CONCLUSIONS OF LAW

A. That the general presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Newcomb, 192 NY 238, Matter of Bodfish v. Gallman, 50 AD2d 457). That domicile, in general, is defined as the place an individual intends to return whenever he may be absent [20 NYCRR 102.2(d)]. That the fact that a person registers and votes in one place is important but not necessarily conclusive [20 NYCRR 102.2(d)(2)]. That petitioners, David Schulman and Estella Schulman, were domiciliaries of New York State for 1973 and 1974.

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)].

C. That since petitioners were domiciliaries of New York during 1973 and 1974 and since they spent more than 30 days in New York State, they were

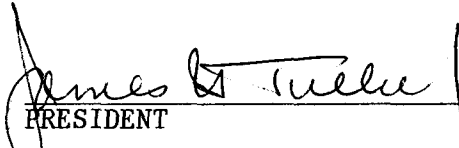
resident individuals, in accordance with the meaning and intent of Section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

D. That the petition of David Schulman and Estella Schulman is denied and the notices of deficiency issued December 22, 1975 and January 16, 1978 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 22 1980

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER