

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

JACK PEERLESS (DECEASED) and ROSE PEERLESS

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York  
City Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City  
of New York for the Years 1980 and 1981.

---

Petitioners, Jack Peerless (deceased) and Rose Peerless, 1200 East 56th  
Street, Brooklyn, New York 11234, filed a petition for redetermination of a  
deficiency or for refund of New York State personal income tax under Article 22  
of the Tax Law and New York City personal income tax under Chapter 46, Title T  
of the Administrative Code of the City of New York for the years 1980 and 1981  
(File No. 46515).

A 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 October 24, 1985 at 11:15 A.M. Petitioners appeared by Herbert  
Granoff, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert  
Kamrass, Esq., of counsel).

#### ISSUE

Whether, during the years 1980 and 1981, petitioners were domiciled in the  
State and City of New York and either maintained a permanent place of abode in  
New York State and City, maintained no permanent place of abode elsewhere, or  
spent in the aggregate more than 30 days in New York State and City and were  
thus New York State and City resident individuals under section 605(a)(1) of the

Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioners, Jack Peerless (deceased) and Rose Peerless, filed joint New York State income tax nonresident returns for each of the years 1980 and 1981 whereon Jack Peerless (hereinafter "the decedent") reported his occupation as "retired." The address reported on each return was that of their New York tax preparer. Attached to the 1980 return were three (3) Federal schedules C whereon the decedent reported income and deductions from three (3) sole proprietorships, each of which reported its business address as "Irving Cohen, 502 Park Avenue, NYC, NY 10022." On said return, the decedent reported partnership income of \$29,069.00 derived from several New York partnerships. The envelope within which their 1980 return was submitted bore the return address "J. Peerless, 1200 E. 56th St., Brooklyn, N.Y. 11234." Said address was that of petitioners' two-family home, one-half of which was rented during the years at issue herein. On petitioners' 1981 return, they reported income identical in nature to that as detailed above.

2. On February 23, 1983, the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be New York State and City residents for 1980 and 1981 since they "maintained a residence in New York City, at 1200 East 56th Street, during each of the tax years." Accordingly, a Notice of Deficiency was issued against petitioners on July 21, 1983 asserting New York State and City personal income tax of \$14,429.40, plus interest of \$3,526.29, for a total due of \$17,955.69.

3. Petitioners alleged in their petition that they were domiciliaries and residents of the State of Florida and had been such since 1978. In 1971, they

purchased an apartment in Florida located at 231 East 174th Street, North Miami Beach. It was alleged that they moved into said apartment in 1973.

4. To substantiate their claim that they were domiciliaries and residents of Florida during 1980 and 1981, petitioners submitted the following:

a. Bills from the Florida Power and Light Company for kilowatt hours used at the aforesated Florida address during 1980 and 1981. One check to said company was also submitted. Said check, dated August 10, 1980, bore petitioners' Brooklyn, New York address and was drawn on Manufacturers Hanover Trust Company, 20 Flatbush Avenue, Brooklyn, New York 11217.

b. A receipt evidencing the decedent's filing of a Florida Declaration of Domicile and payment of a voting fee on December 22, 1978.

c. Documentation evidencing that the decedent registered to vote in Dade County, Florida on December 22, 1978 and that Mrs. Peerless registered to vote in Dade County, Florida on February 22, 1979.

d. Documentation evidencing that the decedent applied for a Homestead Exemption with the Dade County Property Appraiser on February 22, 1979 and that such exemption was granted on January 10, 1980.

e. Documentation evidencing that the decedent's automobile insurance was handled by State Farm Mutual Automobile Insurance Company's Florida office during 1980.

f. Documentation evidencing that petitioners paid Florida real property taxes during 1980 and 1981.

g. The death certificate of the decedent indicating that he was deceased on June 30, 1982. Said certificate also indicated that his "usual residence" was 1200 East 56th Street, Brooklyn, New York and that he was buried at Wellwood Cemetery in Farmingdale, New York.

h. Several real estate agreements entered into between May 15, 1978 and October 14, 1981 for sale of their Brooklyn, New York residence, with all furniture, carpets and fixtures.

i. Documentation evidencing that the decedent's son, Philip Peerless, had been appointed administrator of the estate of the decedent. The Petition for Administration was filed in the Circuit Court for Dade County, Florida.

j. The decedent's Last Will and Testament executed on April 6, 1982, wherein his address was listed as 231-174th Street, Miami Beach, Florida.

k. Documentation evidencing that the Last Will and Testament was probated in Florida.

l. Documentation evidencing that the decedent filed a Florida Intangible Personal Property Tax Return for 1981.

5. Petitioners had been making frequent trips to Florida for approximately 25 years prior to the years at issue.

6. During each of the years at issue, petitioners went to Florida from approximately mid-September to approximately mid-April. The balance of each year was spent in New York, either at their Brooklyn residence or a cottage which they rented in the Catskill Mountains.

7. The Brooklyn, New York house was sold in 1984.

8. Petitioner Rose Peerless is currently residing in Brooklyn, New York.

#### 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 (20 NYCRR 102.2[d][2]). To change one's domicile requires an intent to give up the old and take up the new (Matter of Newcomb,

192 N.Y. 238) ... The evidence to establish the required intention to effect a change of domicile must be clear and convincing (Ruderman v. Ruderman, 193 Misc. 85; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that they had changed their domicile from New York to Florida prior to or during the years at issue herein. Accordingly, it must be held that petitioners were domiciled in New York during the years 1980 and 1981.

C. That section 605(a) of the Tax Law provides, in pertinent part, that:

"-- A resident individual means an individual:

(1) who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state..."

D. That for New York City purposes, section T46-105.0(a)(1) of the Administrative Code of the City of New York provides a substantially similar definition for a City resident individual as that provided for a New York State resident individual under section 605(a)(1) of the Tax Law.


E. That since petitioners maintained a permanent place of abode in New York State and City during each of the years 1980 and 1981 and spent in the aggregate more than thirty days of 1980 and 1981 in New York State and City, they were resident individuals of New York State and City during each of the years 1980 and 1981.


F. That the petition of Jack Peerless (deceased) and Rose Peerless is denied and the Notice of Deficiency dated July 21, 1983 is sustained; together with such additional interest as may be lawfully owing.

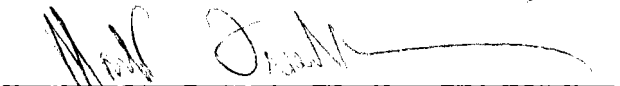
DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER