

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

DIANA ROSS

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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.

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Petitioner, Diana Ross, c/o Loeb & Loeb, 10100 Santa Monica Boulevard,  
Suite 2200, Los Angeles, California 90067, 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. 60881).

A hearing was held before Allen Caplowaith, Bearing Officer, at the  
offices of the State Tax Commission, Two World Trade Center, New York, New  
York, on December 9, 1986 at 9:15 A.M., with all briefs to be submitted by  
January 31, 1987. Petitioner appeared by Andrew Garb, Esq. and Edward H. Hein,  
Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass,  
Esq., of counsel).

#### ISSUE

Whether petitioner was domiciled in, and a resident of New York State and  
City during the years 1980 and 1981.

#### FINDINGS OF FACT

1. Diana Ross (hereinafter "petitioner"), filed New York State nonresident

the years 1980 and 1981. On each return petitioner allocated her salary income to sources within and without the State and City of New York.

2. On December 17, 1984, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioner wherein certain adjustments were made which were explained as follows:

"Since you have not submitted the information requested to substantiate that your domicile was not New York, you are considered a full year domiciliary of New York for the entire 1980 and 1981 tax years and all income received is taxable to New York.

Partnership losses are disallowed as unsubstantiated."

3. Based on the above statement, a Notice of Deficiency was issued against petitioner on March 6, 1985 asserting additional New York State and City personal income tax for the years 1980 and 1981 of \$746,355.02, plus penalties of \$37,317.75 and interest of \$297,113.96, for a total due of \$1,080,786.73. Said penalties were asserted for negligence Pursuant to section 685(b) of the Tax Law and section T46-185.0(b) of the Administrative Code of the City of New York.

4. Petitioner executed a consent form which fixed the period of limitation upon assessment of personal income tax for the taxable year ended December 31, 1980, to any time on or before October 15, 1985. Said consent form, which was validated on August 17, 1984, was timely since petitioner's 1980 return was not filed until October, 1981.

5. The issue respecting petitioner's claimed partnership losses was resolved in her favor at a pre-hearing conference. Accordingly, the sole remaining issue is whether petitioner was domiciled in, and a resident of New York State and City during the years 1980 and 1981.

6. Petitioner, a renowned vocalist, was born and raised, received her formal education and commenced her career as a performer with Motown Record Corporation in Michigan, where her parents resided and were domiciled at the time of her birth and at all times thereafter.

7. **In or** before 1970 petitioner moved from Michigan to California and purchased a home in Beverly Hills (her "Beverly Hills home")<sup>1</sup> in which she, her then husband and her three children lived together as a family. After commencing divorce proceedings on June 1, 1976, petitioner and her children continued to reside in her Beverly Hills home which she retained throughout the years at issue and until 1985, **at** which time it was **sold**. In June 1983, her Beverly Hills home had a fair market value of \$2,200,000.00.

8. In late 1976 or early 1977 petitioner obtained the principal role of Dorothy in "The Wiz", a movie set in New York City. Accordingly, she was required to work in New York City on pre-production, production and post-production work relating to the film for an extended period. Since petitioner had obtained custody of her three children she brought them with her to New York and enrolled them in a private school in New York.

9. After unsuccessfully seeking to rent in the area of her children's school, **on** July 13, 1977 petitioner purchased a cooperative apartment in New York City for \$95,000.00.

10. "The Wiz" did not premiere until October 1978.

11. **In** 1978 petitioner commenced a search for a suitable home in Connecticut. In 1979 she made an offer on a house in Greenwich, Connecticut. In March 1980

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1 **In** the interest of petitioner's privacy and security, specific names, addresses and similar data not relevant to the issue herein has been **omitted from the decision**

she contracted to buy the house, and on July 1, 1980 she closed the purchase of the home ("the Greenwich home") .

12. Petitioner's Beverly Hills home and her Greenwich home each had extensive grounds, a tennis court, and a swimming pool. She sold her Beverly Hills home in 1985 for \$1,750,000.00. Her Greenwich home, including a contiguous unimproved parcel also acquired in 1980, cost over \$2,000,000.00.

13. At the hearing petitioner testified that her domicile, her permanent home and the place to which she intended to return, had been her Beverly Hills home until she moved to Connecticut, at which time it became her Greenwich home. She further testified that she had never considered the New York apartment her home.

14. Voluminous documentation was submitted by petitioner to show that her actions during the years 1977 through 1980 were consistent with her claimed continuance of her California domicile during said period.

15. Voluminous documentation was submitted by petitioner to show that her actions, since the purchase of her Greenwich home, were consistent with her claimed change of domicile to Connecticut.

16. Petitioner's tax returns were consistent with her testimony regarding her domicile. She timely filed California resident and New York nonresident income tax returns for 1977, 1978 and 1979. Her 1980 California income tax return states that she was a California resident for six months and a Connecticut resident for the remainder of the year.

17. Petitioner continuously maintained her New York apartment during the years at issue.

18. Petitioner did not spend more than 183 days in New York during each year at issue.

19. Petitioner's proposed findings of fact "2", "3", "4", "5", "6", "7", "9", "10", "11", "12", "13", and "18" are accepted and incorporated herein; petitioner's proposed findings of fact "1" and "14" are accepted in part; petitioner's proposed findings of fact "15", "16", and "17" are rejected as being conclusive **in** nature; petitioner's proposed finding of fact "8" is rejected as being irrelevant.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d) provides in relevant part that:

"(1) Domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent.

(2) 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; this rule applies even though the individual may have sold or disposed of his former home. The burden **is** upon any person asserting a change of domicile to show that the necessary intention existed."

B. To change **one's** domicile requires an intent to give up the old and take up the new (Matter of Newcomb, 192 NY 238, 251). The evidence to establish the required intention to effect a change **of** domicile must be clear and convincing (Ruderman v. Ruderman, 193 Misc 85, 87 affd 275 App Div 834; Matter of Bodfish v. Gallman, 50 AD2d 457).

C. That the facts clearly and convincingly **show** that petitioner was not domiciled in new York State during the years 1980 or 1981. During said years **she** was domiciled in California until she changed her domicile to Connecticut.

D. That section 605(a) of the Tax Law provides in relevant part that:

"A resident individual means an individual:

\* \* \*

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state..."

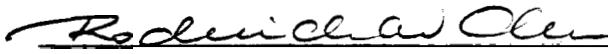
E. That although petitioner maintained a permanent place of abode in New York, she did not spend in the aggregate more than one hundred eighty-three days in New York during either year at issue. Accordingly, petitioner was a nonresident individual of New York State and City during the years 1980 and 1981.

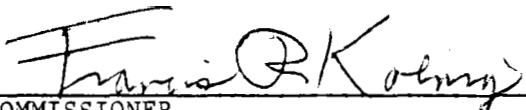
F. That the petition of Diana Ross is granted and the Notice of Deficiency issued March 6, 1985 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 23 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER