

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Doris Kaskel

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Gift Tax under :  
Article 26A of the Tax Law for the Quarterly :  
Periods Ended 9/76 & 12/76.

State of New York  
County of Albany

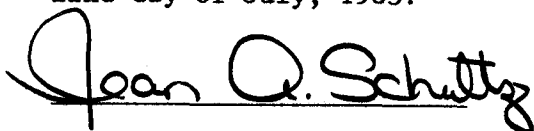
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Doris Kaskel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Doris Kaskel  
c/o Michael Kaminsky  
730 Ft. Washington Ave.  
New York, NY 10040

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 July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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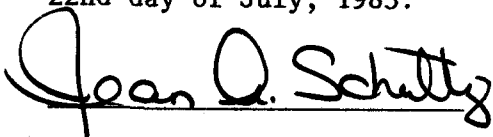
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Michael Kaminsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

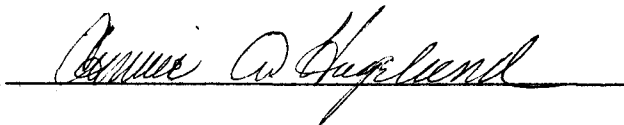
Michael Kaminsky  
730 Ft. Washington Ave.  
New York, NY 10040

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 July, 1983.

  
Joan Q. Schuttz

  
Connie A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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Doris Kaskel : AFFIDAVIT OF MAILING  
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State of New York  
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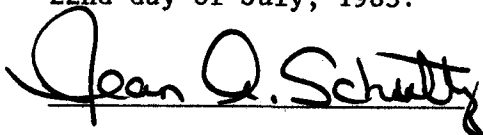
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Norman Greenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Greenberg  
110 East 59th Street  
New York, NY 10022

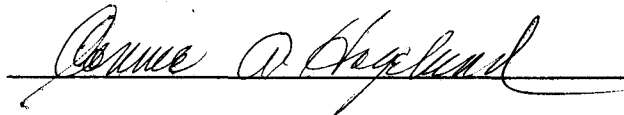
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

July 22, 1983

Doris Kaskel  
c/o Michael Kaminsky  
730 Ft. Washington Ave.  
New York, NY 10040

Dear Ms. Kaskel:

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 & 1007 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 Law 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  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Michael Kaminsky  
730 Ft. Washington Ave.  
New York, NY 10040  
AND  
Norman Greenberg  
110 East 59th Street  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DORIS KASKEL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Gift Tax under Article 26-A of the	:	
Tax Law for the Quarterly Periods Ended	:	
September, 1976 and December, 1976.	:	

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Petitioner, Doris Kaskel, c/o Michael Kaminsky, 730 Fort Washington Avenue, New York, New York 10040, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the quarterly periods ended September, 1976 and December, 1976 (File No. 31629).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1982 at 10:45 A.M., with all briefs submitted by January 5, 1983. Petitioner appeared by Michael Kaminsky, Esq. The Audit Division appeared by Paul B. Coburn (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner was a domiciliary of this state at the time she made the gifts at issue.

FINDINGS OF FACT

1. On or about February 16, 1977, petitioner, Doris Kaskel, filed a New York State Resident Quarterly Gift Tax Return for the quarter ended December, 1976, indicating her address as 900 Bay Drive, Miami Beach, Florida and reporting New York taxable gifts in the amount of \$427,812.57. Mrs. Kaskel did not file a gift tax return for the quarter ended September, 1976.

2. On April 25, 1980, the Audit Division issued to petitioner a Statement of Audit Changes, proposing gift tax due under Article 26-A of the Tax Law for the quarterly period ended September, 1976 in the amount of \$9,787.50, plus penalty and interest. The Statement offered the following explanation for the proposed change:

"This audit change is based on information located in Schedule 'B' of the Federal Return, Form 709, for December, 1976, stating taxable gifts of \$331,000.00 and a specific exemption of \$30,000.00 for the September 1976 quarter. Upon the advice of [the donor's accountant], it was ascertained that these were other than real and tangible property having a physical locality outside of New York State. Therefore, based on our belief of a New York domicile for the donor, these gifts are taxable for New York. New York has no 'Specific Exemption'."

On the same date, the Audit Division issued to petitioner a Statement of Audit Changes, proposing additional gift tax due for the quarter ended December, 1976 in the amount of \$12,680.62, plus interest. This Statement replaced one which had been issued to petitioner on October 12, 1978 and increased the proposed tax to take account of taxable gifts made in the prior quarter.

On July 8, 1980, the Audit Division issued to petitioner two Notices of Deficiency, asserting gift tax due for the quarters ended September, 1976 and December, 1976 in the above-stated amounts.

Petitioner accepts the Audit Division's change in valuation of the gifts made; the only question presented, therefore, is whether petitioner was domiciled in New York or in Florida during the last two quarters of 1976.

3. Petitioner, her husband and their three children lived for many years in Brooklyn, New York. The Kaskels also maintained a vacation home in Connecticut, where they spent many weekends and summers.

4. Until the time of his death on July 5, 1968, Mr. Kaskel had been the sole shareholder of Carol Management Corp. ("Carol Management"), a corporation engaged in the planning, construction, ownership and management of various types of income-producing properties in New York, New Jersey, Connecticut and Florida. Notwithstanding that he had a history of ill health, especially heart disease and diabetes, he remained actively involved in the business until his death. During the last years of Mr. Kaskel's life, Carol Management undertook the erection of the Doral Country Club and Hotel, the Carillon Hotel and a motel in Florida.

5. While the Carillon and then the Doral were under construction, Mr. Kaskel maintained an apartment in the hotel for his and his wife's use. On February 26, 1968, the Kaskels executed a lease for apartment number 727, King Cole Apartments, 900 Bay Drive, Miami Beach, for a term of 2½ years commencing April 15, 1968; they leased this apartment in order to have a refuge, away from the stress and pressures of the business. Mr. Kaskel fully furnished the Bay Drive apartment with his daughter's assistance. The Kaskels also owned a condominium at 465 Park Avenue, New York, New York, approximately one block from the main office of Carol Management.

6. The last three years of his life, Mr. Kaskel remained in Florida, travelling to New York only for important business meetings and to receive medical attention. His health further deteriorated, and he could not tolerate the New York climate. He expressed to his daughter his love for Florida and his feeling that he would spend the remainder of his life there. During this time, Mrs. Kaskel resided in Florida with her husband.

7. Approximately 11 months before his death, Mr. Kaskel executed a will, reciting his domicile as New York, New York.

8. Mr. Kaskel's funeral was conducted in New York. Petitioner remained in New York for a few weeks thereafter and then returned to Florida. Over the succeeding 18 months, she journeyed back and forth between New York and Florida staying in Florida a few days on each occasion, until her health began to fail.

9. Since December, 1975, petitioner has received treatment by a team of physicians, including a psychiatrist, for her emotional depression, Parkinson's disease and tardive dyskinesia. Approximately 3 years were required to assemble the medical team, and because of petitioner's three different conditions, it was difficult for the physicians to find appropriate medications for her. For the first three to four years of treatment, petitioner was attended to by one or more of the physicians at her New York residence on a weekly basis; visits gradually decreased in frequency to approximately twice monthly.

Petitioner has expressed to her doctors and to her family her desire to return to Florida, especially during the winter months when she experiences boredom due to her inability to leave her residence. Her physicians advise her against travelling on public transportation, however, since travelling appears to disorient and upset her. In addition, it is the opinion of her psychiatrist that the lengthy process of assembling a satisfactory treatment team would have to begin all over again in Florida, should she go there.

10. When the lease on the Bay Drive apartment expired, Mrs. Kaskel executed leases for 3 additional terms, the last of which expired on October 31, 1974.

11. Sometime in 1975 or 1976, Mr. Kaminsky (petitioner's representative herein) became aware of petitioner's lease on the Bay Drive apartment and also of its forthcoming conversion to a condominium. Petitioner told Mr. Kaminsky she wished to own the condominium, because of the sentiments associated with it and to use it when she was able. On November 1, 1976, Arlen King Cole Corp.



deeded condominium parcel 727 at 900 Bay Drive to petitioner. Thereafter, Mr. Kaminsky, working with Florida counsel, instructed petitioner to "perfect[] all the legal indicia of domicile in Florida...". On December 9, 1977, petitioner executed a will, reciting her residence as County of Dade, State of Florida. On November 20, 1978, petitioner filed a Declaration of Domicile with Dade County, stating that since January 1, 1976 she had been a bona fide resident of Florida. Petitioner retained her banking relationships in New York because her accounts were used as collateral for loans made to Carol Management.

12. For each of the years 1976 through 1982, petitioner filed Florida individual intangible tax returns and paid tax.

13. On or about June 30, 1980, Mr. Kaminsky filed on petitioner's behalf a Gift Tax Domicile Affidavit, stating that: (a) prior to January 1, 1975, petitioner's domicile was New York, New York; and (b) after such date, she was domiciled in Miami Beach, Florida, though she maintained 2 residences (465 Park Avenue, New York, New York and 900 Bay Drive, Miami Beach, Florida) at all times.

14. Appended to Mrs. Kaskel's petition and admitted into evidence was an affidavit of her accountant, who stated therein that at the time he prepared her gift tax return for the quarter ended December, 1976, he was well aware that she had established her domicile in Florida, and that he had erroneously utilized the resident form.

15. Mrs. Kaskel did not appear to testify at the formal hearing, upon the recommendation of her physicians.

16. Included in petitioner's brief were 6 proposed findings of fact all of which have been, in essence, adopted and incorporated into this decision.

17. Petitioner's principal argument proceeds as follows: prior to his death in 1968, Mr. Kaskel established his domicile in Florida; petitioner's domicile is presumed to be that of her husband; after Mr. Kaskel's death, petitioner remained in Florida, carrying on as she had prior to his death and retaining her Florida domicile; petitioner's subsequent residence in New York was involuntary, forced upon her by her health.

#### CONCLUSIONS OF LAW

A. That the New York gifts of a resident donor are determined under Tax Law section 1003, subdivision (a), paragraph (1), as follows:

"The New York gifts of a New York resident are the total amount of gifts made in any calendar quarter within the meaning of section two thousand five hundred three of the internal revenue code, less the amount of any gifts included therein of real or tangible personal property having an actual situs outside New York state."

A nonresident is taxed on gifts of real or tangible personal property actually located in New York and of intangible personal property located within New York employed in carrying on a business in this state by the donor. Section 1003(a)(2). In the presentation of their cases, the parties herein treated the term "resident" as equivalent to "domiciliary". The term "resident" is not defined in Article 26-A, nor is there case law defining the term for gift tax purposes. However, the courts, in interpreting the estate tax law, have generally held that "resident" and "domiciliary" are synonymous (Matter of Trowbridge, 266 N.Y. 283 [1935]; In re Daly's Estate, 36 N.Y.S.2d 954 [Surrogates' Ct., N.Y. Co. 1942]), and the terms are so treated in this decision.

B. That the burden of proving that in 1968 (or sometime prior thereto), Mr. Kaskel established his domicile in Florida and that Florida therefore constituted petitioner's domicile, is upon petitioner, pursuant to section 689(e) as made applicable to Article 26-A by section 1007(b); she has failed to


carry her burden. In 1968, the Kaskels held a 2½ year leasehold on a Miami Beach apartment. Through the testimony of the Kaskels' daughter, it has been shown that Mr. Kaskel journeyed to New York only for business and medical treatment and Mr. Kaskel felt he would spend the rest of his life in Florida. This evidence, while supporting petitioner's argument, is contradicted by Mr. Kaskel's recitation of domicile in his will, the maintenance of the Park Avenue condominium, and the conduct of his funeral in New York (where, presumably, he was interred). The Audit Division therefore properly considered petitioner a resident and domiciliary of New York during the last 2 quarters of 1976.

C. That the petition of Doris Kaskel is hereby denied, and the Notices of Deficiency issued on July 8, 1980 are sustained.

DATED: Albany, New York

JUL 22 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER