

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT M. SHAPIRO and ETHNE SHAPIRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Personal Income Taxes under Article (5) 22 of the Tax Law for the Year ~~(s) or Period (x)~~ 1971.

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Robert M. Shapiro and Ethne Shapiro

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. Robert Shapiro
980 Fifth Avenue
New York, New York 10021

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

16 day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT M. SHAPIRO and ETHNE SHAPIRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(3)~~ 22 of the :
Tax Law for the Year ~~(3)~~ ~~or Period(s)~~ 1971. :

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon & Richard Ackerman, Esq. Guggenheimer & Untermyer (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Martin A. Roeder & Richard Ackerman, Esqs. Guggenheimer & Untermyer 80 Pine Street New York, New York 10005 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)~~ representative of the ~~(representative)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ representative of the ~~(representative of the)~~ petitioner.

Sworn to before me this
16 day of August, 1977.

Marsina Donnini

Just Mack



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

**Mr. & Mrs. Robert Shapiro
980 Fifth Avenue
New York, New York 10021**

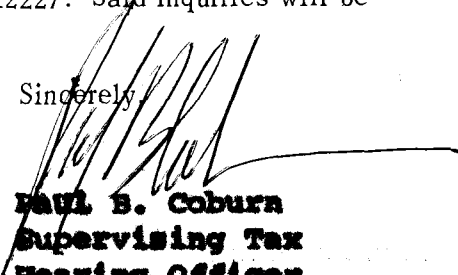
Dear Mr. & Mrs. Shapiro:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely


**PAUL B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT M. SHAPIRO AND ETHNE SHAPIRO : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioners, Robert M. Shapiro and Ethne Shapiro, 980 Fifth Avenue, New York, New York 10021, have 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 1971. (File No. 14681).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 22, 1977, at 9:15 a.m. Petitioners appeared by Guggenheimer and Untermyer, (Martin A. Roeder, Esq. and Richard Ackerman, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner, Robert M. Shapiro, was a resident of New York State during the year 1971 when he sold 20,000 shares of Simplicity Pattern Co., Inc.

FINDINGS OF FACT

1. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioners indicating a deficiency of \$186,439.20, plus interest, for the 1971 tax year.

2. On or about May 27, 1971, petitioner, Robert M. Shapiro (herein, "Mr. Shapiro") sold to underwriters 20,000 shares of common stock of Simplicity Pattern Co., Inc. (herein, "Simplicity Pattern"), realizing a long-term capital gain of \$1,919,641. In their joint New York State Income Tax Return for the year 1971 (Form IT-201), petitioners eliminated this gain on the ground that at the time the gain was realized, Mr. Shapiro was not domiciled in New York State. (Mr. Shapiro had lived in England since February, 1955.) The Income Tax Bureau contends that Mr. Shapiro was a domiciliary of New York State at the time of the stock sale, and that in 1971 he spent more than 30 days in New York, thus making him a resident for income tax purposes for the entire year.

3. Prior to 1941 Mr. Shapiro resided in Connecticut with his parents. Thereafter, until 1945, he was in the United States Army stationed in Virginia, Florida and the Pacific. In 1945 he began working at Simplicity Pattern. Upon marrying his first wife, he lived in California until 1950, at which time he purchased a house in Great Neck, New York.

4. The Great Neck house was his residence until early in 1954 when Mr. Shapiro separated from his first wife and took up residence in a small apartment in the Peter Cooper Hotel in New York City. His first wife and their four children continued to live in the house in Great Neck.

5. Mr. Shapiro testified that he then requested his company to transfer him to another part of the world. "While I was living in New York I thought that I would want as complete a change as possible. Things were not happy. A reconciliation had been attempted but didn't work and I wanted to go away. I discussed this with the company and they offered me a chance to go abroad, which I accepted very happily at the time." (Tr., 19-20) He was at that time serving as sales director of Simplicity Pattern.

6. Later in the hearing Mr. Shapiro testified: "Actually, I picked England. I could have gone to Germany, perhaps, because we had a company in Germany. We had a company in Japan at the time. Simplicity needed help in all three areas." (Tr., 5)

7. Mr. Shapiro subsequently surrendered his apartment in New York City. The Great Neck house continued as the residence of his first wife and their children. (In due course, Mr. Shapiro was divorced from his first wife and the house was transferred to her.)

8. In February, 1955, Mr. Shapiro left the United States to assume the position of Managing Director of Simplicity Patterns, Ltd., the wholly owned English subsidiary of Simplicity Pattern, his employer in New York. He had no written contract with the English company until September 20, 1956. This contract covered the calendar year 1956 and provided for successive annual renewals, unless either party gave one month's notice of termination prior to the end of a calendar year. Commencing with January 1, 1960, a new contract was made with Simplicity Patterns, Ltd. to run for a ten year, four month term ending on April 30, 1970. After 1970, Mr. Shapiro remained in the same employment without a contract until July 1, 1971.

9. In order to work in England, Mr. Shapiro required a special visa which he procured from the English government. This visa required a yearly renewal. In 1959 the Home Office waived this restriction. From that point on, Mr. Shapiro did not require an annual renewal of his visa.

10. Shortly after arriving in England in 1955, Mr. Shapiro took a seven year lease on an apartment at 36 Arlington House, London, S.W. 1. He furnished the apartment and lived in it until May, 1961, at which time he moved to a new apartment, again pursuant to a seven year lease, at 37 Campbell Court, Queensgate Gardens, London 7 W. 7. He also furnished this apartment.

11. In 1960 he married an English citizen. Mr. Shapiro and his English wife had one son who was born in London. Mr. Shapiro testified that when he was seeking his son's admission to Hill House, a London primary school, the headmaster explained to him that the school did not want to admit boys who were not going to remain in the school. Mr. Shapiro testified, "At which time I explained to him that (it) was my intention that we were permanently in London and that I intended my son to go on to public school after graduation from the primary school. He accepted that and enrolled Richard." (Tr., 40)

12. In 1968 Mr. Shapiro purchased a home in Folkestone, Kent, England, which he placed in the name of his wife. His father-in-law lived in the house. Mr. Shapiro testified that "We (he and his wife) thought that when I retired that is where we would like to have our roots." (Tr., 120)

13. That same year Mr. Shapiro purchased a house in Westhampton Beach, Long Island for \$96,000. Mr. Shapiro testified that his brother, James Shapiro, lived in it "as I was not able to use it at the time." (Tr., 47) He also testified that he decided that "not only was it a good investment, but it would make a nice holiday home if and when we could enjoy it." (Tr., 49) Mr. Shapiro did not occupy the house until his return to New York in 1971.

14. Mr. Shapiro maintained a checking and securities account in the United States, both under the control of his attorney. His attorney also handled all receipts of American funds and disbursed certain funds, for the most part, payments of alimony to Mr. Shapiro's former wife, and sums for support of the children of his first marriage.

15. During the period 1955 to 1971, Mr. Shapiro made various trips to the United States, all of which, except for two trips to attend the funerals of his mother and brother, were for business purposes. On these trips Mr. Shapiro stayed in hotels.

16. Mr. Shapiro paid taxes in England on his English earnings (approximately \$20,000), and taxes in the United States on his worldwide income (approximately \$79,000).

(Tr., 118) (In addition to his responsibilities in England, Mr. Shapiro supervised Simplicity Pattern subsidiaries in Australia, New Zealand, Germany and South Africa. Also, from March 19, 1955, on, he served as Senior Vice President and Director of Foreign Operations for the parent company, Simplicity Pattern.)

17. On April 30, 1971, Mr. Shapiro was elected President of Simplicity Pattern. He testified that a few months prior to his election as President he had been advised by his brother, James J. Shapiro, that he was to be elected President.

His brother at that time was Chairman of the Board and Chief Executive Officer of the company. James Shapiro had been a co-founder of Simplicity Pattern in 1927, along with Mr. Shapiro's father.

18. In June, 1971, Mr. Shapiro purchased an apartment in New York City which he had seen on a visit to the United States in December, 1970. On July 24, 1971, he arrived from London in New York with his family.

CONCLUSIONS OF LAW

A. That "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."

20 NYCRR 102.2(d)(1).

"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. In determining an individual's intention in this regard, his declarations will be given due weight,

but they will not be conclusive if they are contradicted by his conduct." 20 NYCRR 102.2(d)(2).

A "United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer. . .does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return." 20 NYCRR 102.2(d)(3).

"Less evidence is required to establish a change of domicile from one state to another than from one nation to another." Matter of Newcomb, 192 N. Y. 238, 259 (1908).

B. That in 1955, Mr. Shapiro wished to go abroad for a complete change of scene following a painful separation from his first wife. He picked England, which he had visited prior to World War II and liked very much. During his sixteen year stay in England Mr. Shapiro formed close attachments to the country. He married an English wife, sent the son born by this marriage to an English school, and purchased property there (at the same time he was purchasing a \$96,000 house in Westhampton Beach, Long Island). But forming attachments and intending a place to be one's permanent home, the essence of domicile, are very different matters.

What took Mr. Shapiro to England was his employment relationship with Simplicity Pattern. He had worked for the company since 1945. Almost his entire professional life had been spent with the company.

His relationship with Simplicity Pattern determined his physical location. Thus, in 1955, when he wished to go abroad, he considered moving to England, Germany or Japan. These places shared one thing in common: Simplicity Pattern had companies in each country.

Mr. Shapiro's relationship with the company was more than merely professional. His brother, James J. Shapiro, and his father had founded Simplicity Pattern in 1927. James Shapiro served as Chairman of the Board and Chief Executive Officer of the company.

Mr. Shapiro's strong ties to the New York based company are further indicated by the fact that from March 19, 1955, a month after his departure for England, to April 30, 1971, when he was elected President and Chief Operations Officer of Simplicity Pattern, he served as Senior Vice President and Director of Foreign Operations of Simplicity Pattern, in addition to serving as Managing Director of Simplicity Patterns, Ltd.

Assigned to England by his New York based company, Mr. Shapiro's employment relationship with Simplicity Pattern was the key factor for his stay in England, rather than any intention to change domicile.

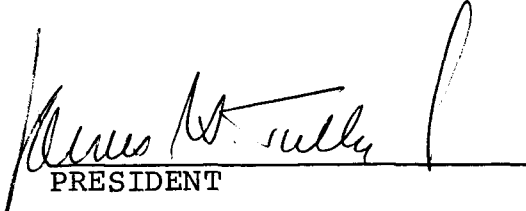
C. That petitioners have failed to meet their burden of showing that Mr. Shapiro intended to remain abroad permanently and not to return. 20NYCRR 102.2(d)(3)

D. That in the 1971 tax year, petitioners were domiciled in and spent more than thirty days in New York State and therefore were resident individuals in accordance with the meaning and intent of section 605(a)(1) of the Tax Law.

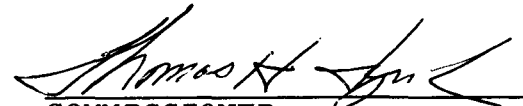
E. That the petition of Robert F. Shapiro and Ethne Shapiro is denied and the Notice of Deficiency issued March 29, 1976, is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT M. SHAPIRO AND ETHNE SHAPIRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(ss)~~ 22 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 1971. :

State of New York
County of Albany

John Huhn , 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 12th day of September , 1977 , she served the within Notice of Decision by ~~(certified)~~ mail upon Robert M. and Ethne Shapiro ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Robert M. Shapiro
980 Fifth Avenue
New York, New York 10021

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

12th day of September , 1977.

Janet Mack

John Huhn

FORMAL HEARING

TA-26 (4-76) 25M
STATE OF NEW YORK

Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

REC'D. DEPT. OF TAX & FINANCE
SEP 6 1977
SUPERVISING TAX HEARING OFFICER

Handwritten signature/initials

Handwritten: UNRECORDED

SEP 2 1977
ALBANY, NY

Mr. & Mrs. Robert Shapiro
980 Fifth Avenue
New York, New York 10021

Handwritten notes and stamps at top of page