

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES H. and JOYCE B. VAN HORN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1971 and 1972.

State of New York
County of Albany

John Huhn, 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 31st day of March, 1978, ~~he~~ served the within
Notice of Decision by ~~(certified)~~ mail upon James H. & Joyce B.

VanHorn (~~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. James H. Van Horn
47 Dreve de L'Ermite
1640 Rhode Street
Genese, Belgium

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

31st day of March, 1978

H. Walker

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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JAMES H. and JOYCE B. VAN HORN

For a Redetermination of a Deficiency or
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Taxes under Article (x) 22 of the
Tax Law for the Year(s) ~~1971 and 1972~~
1971 and 1972.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, 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 31st day of March, 1978, he served the within
Notice of Decision by (certified) mail upon Steven S. Goldberg

(representative of) the petitioner in the within proceeding,

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

Steven S. Goldberg, Esq.
International Telephone and Telegraph Corporation
320 Park Avenue
New York, New York 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

31st day of March, 1978

[Signature]

John Huhn



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

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

March 31, 1978

**Mr. & Mrs. James H. Van Horn
47 Drove de L'Ermite
1640 Rhode Street
Genese, Belgium**

Dear Mr. & Mrs. Van Horn:

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 **(b) 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,

**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES H. and JOYCE B. VAN HORN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971 and 1972. :

Petitioners, James H. and Joyce B. Van Horn, residing at 47 Dreve de L'Ermite, 1640 Rhode Street, Genese, Belgium, 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 1971 and 1972 (File No. 11258).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 13, 1977 at 10:45 A.M. The petitioners appeared by Steven Goldberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the petitioners were residents of New York State for income tax purposes during the entire year 1971.

FINDINGS OF FACT

1. Petitioners, James H. and Joyce B. Van Horn, filed New York State non-resident income tax returns for the years 1971 and 1972. On their 1971 return, petitioners reported that they were residents of New York State from January 1, 1971 to July 15, 1971.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against the petitioners, James H. and Joyce B. Van Horn. This was done on the grounds that petitioners were domiciliaries of New York State for the year 1971, and since they did not meet the conditions set forth in 20 NYCRR 102.2(b), that they were considered to be New York State residents for the entire year 1971. The Bureau also made an adjustment on petitioners' 1972 nonresident return which resulted in a refund due them of \$24.36. This refund was applied against the additional personal income tax imposed against the petitioners for the year 1971.

3. Petitioners, James H. and Joyce B. Van Horn, were domiciliaries of the State of New York during the year 1971. During the years 1963 through July of 1971, petitioners resided in New York State. As of 1968, petitioner James H. Van Horn was employed by the ITT Corporation. During July of 1971, and upon a request for transfer, petitioner James H. Van Horn was assigned on a permanent basis by the ITT Corporation to its office in Belgium. He continued to reside in Belgium with his family and has since been promoted to the presidency of the corporation's European facility.

4. Petitioner James H. Van Horn and his family moved to Belgium in July of 1971. He retained his former residence in Larchmont, New York, and converted said property into rental income-producing property. He shipped his furniture and other tangible personal property to Belgium.

5. Petitioner James H. Van Horn and his family currently reside in a leased apartment in Belgium. Petitioner maintained that he rented property because he considered the ownership of real property in Belgium to be complex and unnecessary for him.

6. Petitioner James H. Van Horn obtained a Belgian resident visa, a Belgian work permit and a Belgian driver's license.

7. Petitioner James H. Van Horn did not maintain any stock or brokerage accounts in New York State. He closed most of his New York State bank accounts, but maintained a checking account with a New York State banking facility. The petitioner contended that the reason for maintaining the checking account in New York State was in order to receive his rental income. He also maintained a European-American Bank account and a Continental Bank of Illinois account in Belgium.

8. Petitioners, James H. and Joyce B. Van Horn, filed and paid Belgian taxes and filed their joint Federal income tax return as bona fide residents of Belgium. In addition, their children attended school in Belgium.

9. Petitioner James H. Van Horn discontinued his affiliations with organizations in New York State and established membership in several clubs in Belgium.

10. Petitioners, James H. and Joyce B. Van Horn, did not wish to renounce their United States citizenship and did not take any steps to become citizens of Belgium.

CONCLUSIONS OF LAW

A. That pursuant to 20 NYCRR 102.2(d)(3), "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". Although the petitioners did take certain steps which appear to have created a new domicile, these steps were not sufficient to show a clear and convincing intent of establishing a new and permanent domicile, with the appropriate sentiment, feeling and permanent association which usually accompanies such a domicile.

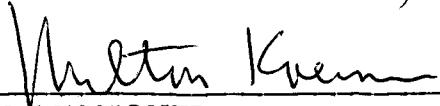
B. That petitioners, James H. and Joyce B. Van Horn, were domiciliaries of New York State, maintained a permanent place of abode in New York State and spent more than thirty days in New York State during the year 1971. Therefore, petitioners, James H. and Joyce B. Van Horn, are held to be New York State residents for the year 1971 in accordance with the meaning and intent of section 605 of the Tax Law.

C. That the petition of James H. and Joyce B. Van Horn is denied and the Notice of Deficiency issued on March 25, 1974 in the sum of \$2,065.17 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER