

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John P. & Joyce K. Berdusco :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1972. :

State of New York

County of Albany

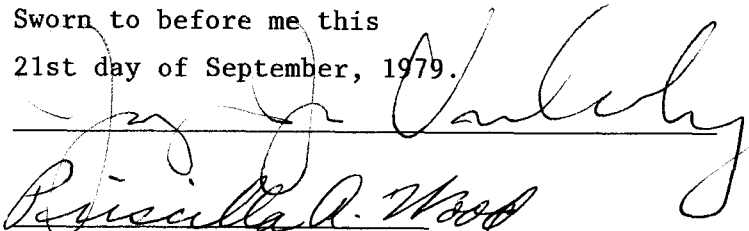

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by certified mail upon Michael A. Smith the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Michael A. Smith
Ernst & Ernst
99 Washington Ave.
Albany, NY 12210

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
21st day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

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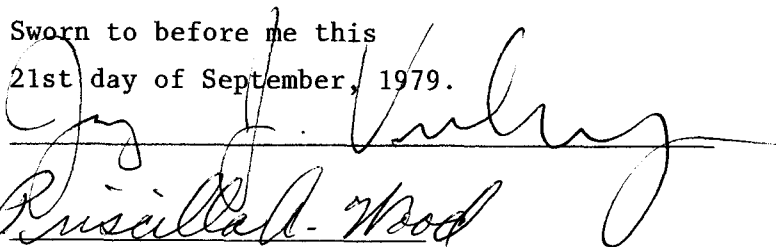
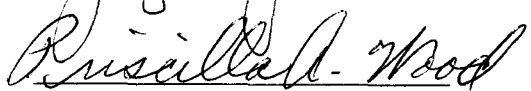
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by certified mail upon John P. & Joyce K. Berdusco, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John P. & Joyce K. Berdusco
12025 Castle Row Overlook
Carmel, IN 46032

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
21st day of September, 1979.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

John P. & Joyce K. Berdusco
12025 Castle Row Overlook
Carmel, IN 46032

Dear Mr. & Mrs. Berdusco:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Michael A. Smith
Ernst & Ernst
99 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOHN P. BERDUSCO and JOYCE K. BERDUSCO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

DECISION

Petitioners, John P. Berdusco and Joyce K. Berdusco, 12025 Castle Row Overlook, Carmel, Indiana 46032, 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 1972 (File No. 15133).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 13, 1978 at 9:15 A.M. Petitioners appeared by Michael A. Smith. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson and Barry M. Bresler, Esqs., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during 1972.

FINDINGS OF FACT

1. Petitioners, John P. Berdusco and Joyce K. Berdusco, timely filed a New York State income tax nonresident return for 1972, on which they indicated their period of New York residence to be January 1, 1972 to August 23, 1972.

2. On December 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on the grounds that they were citizens of the United States who were a) domiciled in New York State, b) maintained a permanent place of abode in New York State, c) did not maintain a permanent

place of abode outside New York State during the entire taxable year and d) spent in excess of 30 days in the State; therefore, they were taxable as residents on total income from all sources to the extent that such income was reported for Federal income tax purposes. On April 12, 1976, the Income Tax Bureau issued a Notice of Deficiency asserting additional personal income tax for 1972 of \$2,123.47, plus interest of \$476.46, for a total due of \$2,599.93.

3. Petitioners were Canadian citizens who were domiciled in the State of Indiana before moving to New York State in 1972.

4. In January of 1971, petitioner John P. Berdusco was assigned by his employer, Eli Lilly & Co., to a special project in New York State, which project was for the purpose of evaluating a recently-acquired business. The assignment by his employer was for a limited period of time which was not to exceed two years.

5. Petitioner John P. Berdusco commuted weekly from Indiana during the first two months of his assignment in New York State. In order to avoid the cost and burden of such commuting, he rented a home at 29-A Plandome Road, Port Washington, New York, and moved his family to New York State in March of 1971.

6. Petitioners sold their Indiana residence due to the high cost of maintaining residences in Indiana and New York.

7. Petitioners maintained their business and financial connections in Indiana during their temporary stay in New York State.

8. On August 23, 1972, petitioner John P. Berdusco completed his assignment in New York State and was transferred to a temporary position in England by his employer, Eli Lilly & Co. Upon leaving for England, they gave up their rented home in Port Washington, New York, and had no other ties with New York State.

CONCLUSIONS OF LAW

A. That in general, domicile is the place which an individual intends to be his permanent home, that is, the place to which he intends to return whenever he may be absent. Petitioners, John P. Berdusco and Joyce K. Berdusco, were not domiciliaries of New York State within the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(d)(1) and (2). Once established, a domicile 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.

B. That petitioners, John P. Berdusco and Joyce K. Berdusco, did not maintain a permanent place of abode in New York State, within the meaning and intent of section 605 of the Tax Law. Also, 20 NYCRR 102.2(e) states the following:

A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him...Also, a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose...If such an individual takes an apartment in New York during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in New York, because his place of abode here is not permanent.

C. That the petition of John P. Berdusco and Joyce K. Berdusco is granted and the Notice of Deficiency issued on April 12, 1976 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1979

PRESIDENT

COMMISSIONER

COMMISSIONER