

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Clellen William & Julia Bryant :
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 1973. :

AFFIDAVIT OF MAILING

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Clellen William & Julia Bryant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clellen William & Julia Bryant
48 Hillside Ave.
Quebec, Canada H95-SE3

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 16, 1979

Clellen William & Julia Bryant
48 Hillside Ave.
Pointe Claire
Quebec, Canada H95-SE3

Dear Mr. & Mrs. Bryant:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLELLEN WILLIAM BRYANT and JULIA BRYANT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioners, Clellen William Bryant and Julia Bryant, 48 Hillside Avenue, Pointe Claire, Quebec, Canada H95-5E3, 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 1973 (File No. 19862).

On February 8, 1979, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioners changed their domicile and residence from New York State to Canada during 1973.

FINDINGS OF FACT

1. Petitioners, Clellen William Bryant and Julia Bryant, filed separate New York State Personal Income Tax Resident Returns for the year 1973. Clellen William Bryant indicated his period of New York State residence to be from August 1, 1968 to March 1, 1973 and Julia Bryant indicated hers to be from August 1, 1968 to March 31, 1973.

2. The Income Tax Bureau held that petitioner Clellen William Bryant was domiciled and a resident of New York State prior to 1973. That a temporary absence, such as a tour of duty, does not constitute a permanent change of domicile and that he is still considered to be a resident of New York State; as such, all income earned during the year is taxable to New York. However, he was entitled to the 911 exclusion as claimed on his Federal income tax return.

The Income Tax Bureau also held the petitioner Julia Bryant was a nonresident alien for New York State income tax purposes.

Accordingly, on March 28, 1977, the Income Tax Bureau issued a Notice of Deficiency against the petitioners, imposing additional personal income tax of \$132.95, plus interest of \$30.27, for a total due of \$163.22.

3. Petitioner Julia Bryant is a British citizen, whose status while living in the United States from August 1, 1968 to March 31, 1973 was that of a resident alien. When Julia Bryant departed the United States, she became a landed immigrant of Canada.

4. Petitioner Clellen William Bryant was a Canadian citizen, who acquired United States citizenship in 1968. He lived in New York State from August 1, 1968 to March 1, 1973. During February 1973, his employer transferred him to Montreal, Canada. The petitioners bought a home in the Montreal area upon returning to Canada.

5. Although Mr. Bryant obtained United States citizenship, he was still considered a Canadian citizen under Canadian law.

6. In a letter to the Income Tax Bureau dated November 7, 1976, petitioner Clellen William Bryant stated, "I have changed jobs in order to remain in Canada, at least until my family is grown." Petitioner has lived in Montreal, Canada area for a total of 13 years and in New York State for a total of 5 years.

7. After returning to Canada, petitioner Clellen William Bryant was eligible for transfer to any of his employer's half-a-dozen United States bureaus outside New York State. Therefore, he argued that the Income Tax Bureau has no grounds for its assumption that he would return to New York State.

8. In a letter to the Income Tax Bureau dated November 5, 1974, petitioner Clellen William Bryant stated, "I am on a normal corporate tour of duty and it is our intention to return to the United States." In a letter to the Bureau dated August 19, 1976, petitioner Clellen William Bryant stated, "However, I could have been transferred back to any of my employer's half-a-dozen U.S. bureaus outside New York State." In a letter to the Bureau dated November 7, 1976, he stated "Yes, I still intend to return to the U.S. eventually -- for a visit, to retire, to change jobs again; I do not know." In his petition, he stated, "Though it was my intention at the time to return to the U.S., I could have been transferred back to any of half-a-dozen of my employer's bureaus outside New York State."

CONCLUSIONS OF LAW

A. That a 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)]. That 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 [20 NYCRR 102.2(d) (2)].

B. That petitioner Clellen William Bryant has stated that his intention at the time of his removal from New York State was to return to the United States; that petitioner Clellen William Bryant has stated that his removal to Canada was for a limited time and that his employer could transfer him back to the United States.

That petitioner Clellen William Bryant's domicile continues to be New York State, since he has failed to meet the burden of proof as imposed by section 689(e) of the Tax Law to establish that his removal to Canada was with the bona fide intention of making his fixed and permanent home there. That petitioner Clellen William Bryant is a resident of New York State for the entire year 1973, in accordance with section 605(a)(1) of the Tax Law.

C. That the petition of Clellen William Bryant and Julia Bryant is denied and that the Notice of Deficiency issued on March 28, 1977 is sustained, together with such interest as is lawfully owing.

DATED: Albany, New York

NOV 16 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER