

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Frank R. & Andree L. Davis :  
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 1974. :

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 Frank R. & Andree L. Davis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

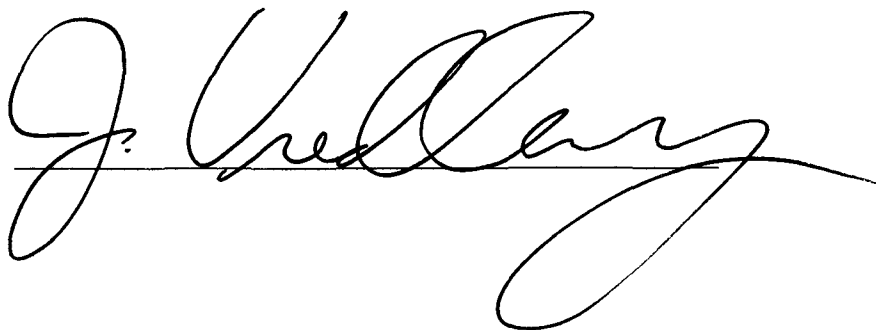
Frank R. & Andree L. Davis  
La Maisonnette  
Brownsville, VT 05037

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



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

November 16, 1979

Frank R. & Andree L. Davis  
La Maisonnette  
Brownsville, VT 05037

Dear Mr. & Mrs. Davis:

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 :  
FRANK R. DAVIS and ANDREE L. DAVIS : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the :  
Year 1974. :

---

Petitioners, Frank R. Davis and Andree L. Davis, La Maisonnette, Brownsville, Vermont 05037, 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 1974 (File No. 20926).

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 November 14, 1978 at 1:15 P.M. Petitioner Frank R. Davis appeared pro se and for his wife, petitioner Andree L. Davis. The Income Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during 1974.

FINDINGS OF FACT

1. Petitioners, Frank R. Davis and Andree L. Davis, timely filed a part-year New York State income tax resident return for 1974, on which they indicated their period of New York residence to be January 1, 1974 to March 31, 1974.

2. On November 14, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on the grounds that they were domiciled in New York State and spent in excess of thirty days in the State; therefore,

they were taxable as residents on their total income from all sources to the extent that such income was reported for Federal income tax purposes. On June 27, 1977, the Income Tax Bureau issued a Notice of Deficiency asserting additional personal income tax of \$1,227.07, plus interest of \$181.01, less an overpayment shown on the return of \$259.00, for a total due of \$1,149.09.

3. Petitioner Frank R. Davis was born and raised in Philadelphia, Pennsylvania. In 1936 his mother purchased a home in Brownsville, Vermont, which state became his domicile. He registered for the draft and in 1942, he entered the U. S. Army. In March of 1946, Frank R. Davis entered the employment of American Express Company in Paris, France, where he worked until he resigned his position in 1951. In 1948 petitioner Frank R. Davis married Andree Antoinette Liband, a citizen of France. From 1951 to 1954, they traveled in the South Pacific and lived for a time in Miami, Florida, after which time he rejoined the American Express Company in Karachi, Pakistan.

4. As a result of his mother's death, petitioner Frank R. Davis inherited the Vermont property. He improved said property considerably over the years, in anticipation of living there the year round.

5. On rejoining American Express, petitioner Frank R. Davis was assigned to overseas posts in Karachi, Paris, Zurich and Brussels. He also headed an interim assignment at its international headquarters in New York City from 1971 to March of 1974. His wife remained in Paris with the children so that they could finish the school year. After completion of the school year, his family joined him in New York City, but kept their fully-furnished apartment in Paris, France. He had maintained this apartment since 1946, and they used it on their return visits to France. Petitioners rented a small apartment in New York City during the period of time in which he worked there. While living in New York, they spent all vacations and most weekends in Vermont. On

moving to Brussels, Belgium, in March of 1974, petitioners gave up their apartment and all ties with New York.

6. Petitioner Frank R. Davis never had a New York driver's license, but did have Vermont and French driver's licenses while residing in New York. Petitioners' automobile was registered in Vermont and they had their personal checking account with a bank in Vermont.

7. Petitioner Andree L. Davis obtained a Vermont driver's license, but did not have a New York driver's license.

8. Petitioners purchased two cemetery lots in Brownsville, Vermont, in 1967.

9. Petitioners never voted in the State of New York.

10. Petitioner Frank R. Davis' United States passport was issued in Paris, France, and listed his address as Brownsville, Vermont.

11. Petitioners have resided in Paris since petitioner Frank R. Davis' retirement in 1977, renting the same apartment that they have maintained there since 1946. Petitioners spent their summers in Vermont and have no intention of returning to New York State to live.

#### CONCLUSIONS OF LAW

A. That petitioners, Frank R. Davis and Andree L. Davis, 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)(2). No change of domicile results from a removal to a new location if the intent is to remain there only for a limited time.

B. That petitioners were not domiciled in New York State and did not spend more than 183 days of the taxable year in the State; therefore, they cannot be taxed as residents of this State.

C. That petitioners were not residents of New York State in 1974 within

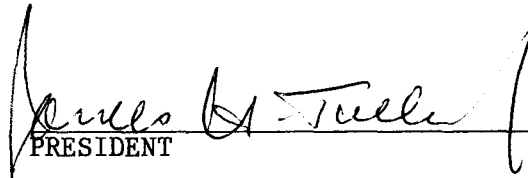
the meaning and intent of section 605 of the Tax Law. Accordingly, the Income Tax Bureau is hereby directed to recompute petitioners' New York taxable income in accordance with section 631 of the Tax Law and authorize a refund of any resulting overpayment.

D. That the petition of Frank R. Davis and Andree L. Davis is granted and the Notice of Deficiency issued June 27, 1977 is cancelled.

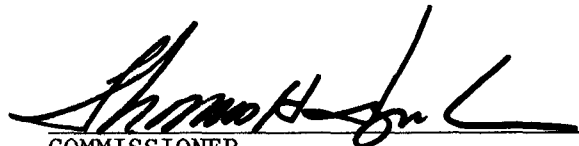
DATED: Albany, New York

**NOV 16 1979**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
**TAX APPEALS BUREAU**

TO ..... Mr. Coburn .....

Unable to locate better address.  
Please file.

11/30/79

Joseph Chyrywaty

M-75 (5/76)

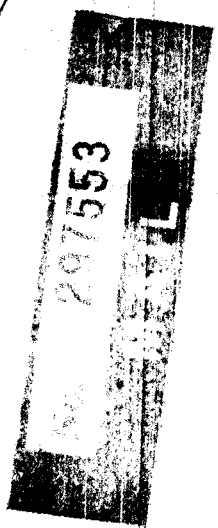
ims

77/09/22



Frank R. & Andree L. Dav  
La Maisennette  
Brownsville, VT 05037

*temporarily out of the country*



STATE CAMPUS  
ALBANY, N. Y. 12227

Direct mail  
if possible unknown  
individual address  
such stamp  
state office in state  
if reply to





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

November 16, 1979

Frank R. & Andree L. Davis  
La Maisonnette  
Brownsville, VT 05037

Dear Mr. & Mrs. Davis:

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 :  
FRANK R. DAVIS and ANDREE L. DAVIS : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the :  
Year 1974. :

---

Petitioners, Frank R. Davis and Andree L. Davis, La Maisonnette, Brownsville, Vermont 05037, 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 1974 (File No. 20926).

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 November 14, 1978 at 1:15 P.M. Petitioner Frank R. Davis appeared pro se and for his wife, petitioner Andree L. Davis. The Income Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during 1974.

FINDINGS OF FACT

1. Petitioners, Frank R. Davis and Andree L. Davis, timely filed a part-year New York State income tax resident return for 1974, on which they indicated their period of New York residence to be January 1, 1974 to March 31, 1974.

2. On November 14, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on the grounds that they were domiciled in New York State and spent in excess of thirty days in the State; therefore,

they were taxable as residents on their total income from all sources to the extent that such income was reported for Federal income tax purposes. On June 27, 1977, the Income Tax Bureau issued a Notice of Deficiency asserting additional personal income tax of \$1,227.07, plus interest of \$181.01, less an overpayment shown on the return of \$259.00, for a total due of \$1,149.09.

3. Petitioner Frank R. Davis was born and raised in Philadelphia, Pennsylvania. In 1936 his mother purchased a home in Brownsville, Vermont, which state became his domicile. He registered for the draft and in 1942, he entered the U. S. Army. In March of 1946, Frank R. Davis entered the employment of American Express Company in Paris, France, where he worked until he resigned his position in 1951. In 1948 petitioner Frank R. Davis married Andree Antoinette Liband, a citizen of France. From 1951 to 1954, they traveled in the South Pacific and lived for a time in Miami, Florida, after which time he rejoined the American Express Company in Karachi, Pakistan.

4. As a result of his mother's death, petitioner Frank R. Davis inherited the Vermont property. He improved said property considerably over the years, in anticipation of living there the year round.

5. On rejoining American Express, petitioner Frank R. Davis was assigned to overseas posts in Karachi, Paris, Zurich and Brussels. He also headed an interim assignment at its international headquarters in New York City from 1971 to March of 1974. His wife remained in Paris with the children so that they could finish the school year. After completion of the school year, his family joined him in New York City, but kept their fully-furnished apartment in Paris, France. He had maintained this apartment since 1946, and they used it on their return visits to France. Petitioners rented a small apartment in New York City during the period of time in which he worked there. While living in New York, they spent all vacations and most weekends in Vermont. On

moving to Brussels, Belgium, in March of 1974, petitioners gave up their apartment and all ties with New York.

6. Petitioner Frank R. Davis never had a New York driver's license, but did have Vermont and French driver's licenses while residing in New York. Petitioners' automobile was registered in Vermont and they had their personal checking account with a bank in Vermont.

7. Petitioner Andree L. Davis obtained a Vermont driver's license, but did not have a New York driver's license.

8. Petitioners purchased two cemetery lots in Brownsville, Vermont, in 1967.

9. Petitioners never voted in the State of New York.

10. Petitioner Frank R. Davis' United States passport was issued in Paris, France, and listed his address as Brownsville, Vermont.

11. Petitioners have resided in Paris since petitioner Frank R. Davis' retirement in 1977, renting the same apartment that they have maintained there since 1946. Petitioners spent their summers in Vermont and have no intention of returning to New York State to live.

#### CONCLUSIONS OF LAW

A. That petitioners, Frank R. Davis and Andree L. Davis, 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)(2). No change of domicile results from a removal to a new location if the intent is to remain there only for a limited time.

B. That petitioners were not domiciled in New York State and did not spend more than 183 days of the taxable year in the State; therefore, they cannot be taxed as residents of this State.

C. That petitioners were not residents of New York State in 1974 within

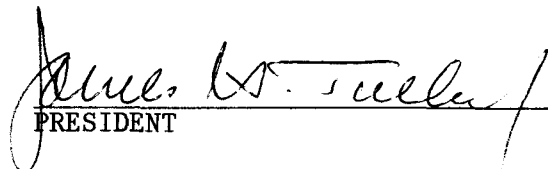
the meaning and intent of section 605 of the Tax Law. Accordingly, the Income Tax Bureau is hereby directed to recompute petitioners' New York taxable income in accordance with section 631 of the Tax Law and authorize a refund of any resulting overpayment.

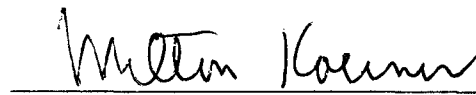
D. That the petition of Frank R. Davis and Andree L. Davis is granted and the Notice of Deficiency issued June 27, 1977 is cancelled.

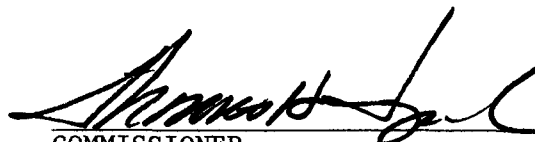
DATED: Albany, New York

**NOV 16 1979**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER