

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Dean R. & Anna M. DeWitt :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Dean R. & Anna M. DeWitt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dean R. & Anna M. DeWitt

801 Jerome St.

Marshalltown, IA 50158

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  
17th day of August, 1979.

Victoria Gary

Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Dean R. & Anna M. DeWitt :

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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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Charles A. Schoeneck 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. Charles A. Schoeneck  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, NY 13202

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  
17th day of August, 1979.

Victoria Gary

Jay Vredenburg



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

August 17, 1979

Dean R. & Anna M. DeWitt  
801 Jerome St.  
Marshalltown, IA 50158

Dear Mr. & Mrs. DeWitt:

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 that reads "Michael Alexander".

cc: Petitioner's Representative  
Charles A. Schoeneck  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|  |   |          |
|--|---|----------|
| In the Matter of the Petition          | : |          |
| of                                     | : |          |
| DEAN R. DE WITT and ANNA M. DE WITT    | : | DECISION |
| for Revision of a Determination or for | : |          |
| Refund of Personal Income Tax under    | : |          |
| Article 22 of the Tax Law for the Year | : |          |
| 1972.                                  | : |          |

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Petitioners, Dean R. DeWitt and Anna M. DeWitt, c/o Bond, Schoeneck & King, One Lincoln Center, Syracuse, New York 13202, filed a petition for revision of a determination or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 14278).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 20, 1977 at 9:15 A.M. Petitioners appeared by Bond, Schoeneck & King (Henry M. Melchor, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether petitioners were residents of New York State after May of 1972.

#### FINDINGS OF FACT

1. Petitioners, Dean R. DeWitt and Anna M. DeWitt, filed a New York State Income Tax Resident Return for 1972 (Form IT-201), on which they indicated that they were residents of New York State from January 1, 1972 to May 31, 1972.

2. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, on the grounds that they were considered residents of New York State for the entire year. The deficiency asserted a tax of \$4,046.95, plus interest of \$792.47, for a total of \$4,839.42.

3. Petitioner Dean R. DeWitt was born and raised in Marshalltown, Iowa. In 1962, his employer, Lennox Industries ("Lennox") transferred him from Marshalltown to Syracuse, New York. Petitioners purchased a home in Fayetteville, New York, in 1962 and established their domicile there.

4. In 1962 Mr. DeWitt purchased a house on Church Street in Marshalltown, Iowa, where his father and stepmother resided. Mr. DeWitt had a remainder interest in the house; his father and stepmother has a life interest therein. Mr. DeWitt transferred his remainder interest by gift to his wife in June of 1972. In 1973 this house was sold and another larger house was purchased for the benefit of Mr. DeWitt's parents.

5. In May of 1972, Lennox transferred Mr. DeWitt to England, in order to manage their European operations. The transfer to England was expected to last for a period of about three years.

6. Petitioners went to Marshalltown, Iowa, for the last week of April and for the first week of May 1972. During this period petitioners resided in their home on Church Street in Marshalltown.

7. Prior to leaving for England, Mr. DeWitt resigned from membership in the Onondaga Country Club and closed his membership in the Syracuse Manufacturers Association. Petitioners also changed their church membership and sold their home in Fayetteville on May 27, 1972.

8. Mrs. DeWitt returned to the United States in October and Mr. DeWitt returned in November of 1975. They took up residence in their home in Marshalltown, Iowa, and Mr. DeWitt resumed employment at Lennox's corporate headquarters which were located there. A month later, petitioners purchased another house in Marshalltown and moved into it.

9. Petitioners contended that it was their intention to abandon their New York domicile and to reestablish a domicile in Iowa in May of 1972.

#### CONCLUSIONS OF LAW

A. That 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 (20 NYCRR 102.2(d)(2)). A person domiciled in New York State is a resident of the State for income tax purposes unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State.

B. That petitioners Dean R. DeWitt and Anna M. DeWitt left New York State in May of 1972 with no intention of returning, but failed to sustain the burden of proof required to show that they established a new domicile outside New York State; therefore, petitioners continued to be domiciled in New York State, within the meaning and intent of 20 NYCRR 102.2(d)(2).

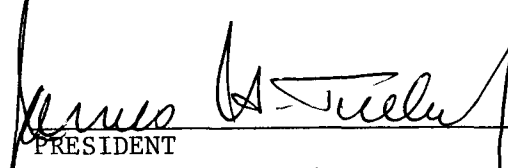
C. That petitioners were domiciled in New York State for all of 1972, maintained a permanent place of abode in this State for part of 1972, and spent more than thirty days in the State in 1972; therefore, petitioners were residents of New York State for all of 1972, within the meaning and intent of section 605(a) of the Tax Law, as said section was then constituted.

D. That the petition of Dean R. DeWitt and Anna M. DeWitt is denied  
and the Notice of Deficiency issued November 24, 1975 is sustained.

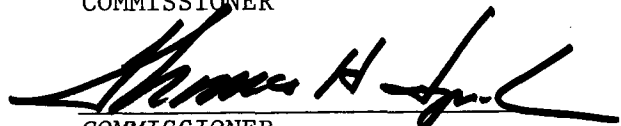
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**

TAX APPEALS BUREAU

TO ..... Paul Coburn .....

Please file.

9/5/79

M-75 (5/76)

From Robert F. Mulligan



REQUEST FOR BETTER ADDRESS

|                              |                        |                                   |
|------------------------------|------------------------|-----------------------------------|
| Requested by<br><i>Wanda</i> | Unit<br><i>General</i> | Date of Request<br><i>8-28-79</i> |
|------------------------------|------------------------|-----------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

|  |                                     |
|--|-------------------------------------|
| Social Security Number<br><i>478-14-9704</i><br><i>478-20-5353</i>     | Date of Petition<br><i>76/04/22</i> |
| Name<br><i>De Witt, Loran R. + Anna M.</i>                             |                                     |
| Address<br><i>801 Jerome Street</i><br><i>Marshalltown, Iowa 50158</i> |                                     |

## Results of search by Files

|   |  |
|---|--|
| <input type="checkbox"/> New address:                     |  |
| <input type="checkbox"/> Same as above, no better address |  |
| <input checked="" type="checkbox"/> Other:                | <i>078H</i><br><i>077H</i><br><i>076H</i><br><i>075H</i> |

|   |                                   |   |
|---|-----------------------------------|---|
| Searched by <i>L. Panella</i><br><i>M. J.</i> | Section <i>11.7</i><br><i>2nd</i> | Date of Search<br><i>8-31-79</i><br><i>9-1-79</i> |
|---|-----------------------------------|---|

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

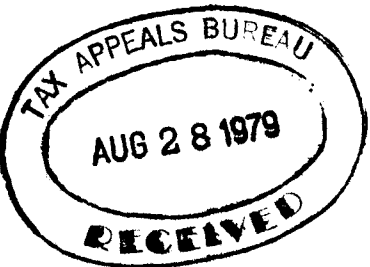
STATE OF NEW YORK

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Dean R. & Anna M. Dewitt  
~~801 Jerome St.~~  
Marshalltown, IA 50158



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

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Sincerely,



cc: Petitioner's Representative  
Charles A. Schoeneck  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
DEAN R. DE WITT and ANNA M. DE WITT : DECISION  
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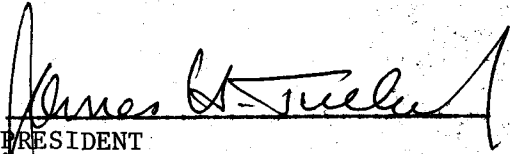
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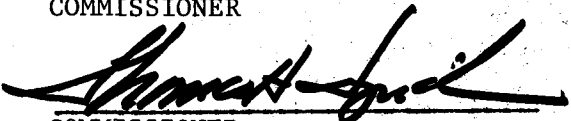
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

BOND, SCHOENECK & KING  
ONE LINCOLN CENTER  
SYRACUSE, N. Y. 13202

Ms. Berthlynn Davis  
Secretary of the State Tax Commission  
Department of Taxation and Finance  
Tax and Finance Building 9  
State Campus  
Albany, New York 12227



December 13, 1978

Mr. Henry H. Melchor  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, New York 13202

Dear Mr. Melchor:

RE: Dean R. and Anna M. DeWitt  
File No. 2-29269385

This is to acknowledge receipt of your letter of November 2, 1978, wherein you request information on the status of the above captioned case.

At present, this case is in the Post Hearing Review Unit, and as such, has not been forwarded to this office.

Should you have any further questions concerning the above, please feel free to contact this office.

Sincerely,

BERTILYNN J. DAVIS  
Secretary to the State Tax Commission

BJD:jrd

December 13, 1978

Mr. Henry H. Melchor  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, New York 13202

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Sincerely,

BERTILYN J. DAVIS  
Secretary to the State Tax Commission

BJD:jrd

# BOND, SCHOENECK & KING

ONE LINCOLN CENTER

SYRACUSE, NEW YORK 13202

(315) 422-0121

111 WASHINGTON AVENUE  
ALBANY, NEW YORK 12210  
(518) 462-7421  
JOHN A. BEACH  
RESIDENT MEMBER

ONE FINANCIAL PLAZA  
FORT LAUDERDALE, FLORIDA 33394  
(305) 467-7105  
ROBERT J. HUNT  
RESIDENT MEMBER

1167 THIRD STREET SOUTH  
NAPLES, FLORIDA 33940  
(813) 262-6812  
DAVID N. SEXTON  
RESIDENT MEMBER

WILLIAM D. JOHNSON (1929-1969)  
GEORGE H. BOND, JR. (1936-1973)  
JOHN C. KINNEY (1947-1974)  
HUBERT C. STRATTON (1927-1978)

CARL E. M. WORBOYS  
JAMES P. McDONALD \*  
STEPHEN J. VOLLMER  
S. PAUL BATTAGLIA  
GARY M. CLARK  
JAMES E. WALSH, III  
L. LAWRENCE TULLY  
MICHAEL P. SHANLEY  
PAUL M. SANSOUCY \*  
ROBERT J. MEISENHOLDER, II  
DAVID PATRICK O'HARA  
HENRY H. MELCHOR  
JOHN D. ALLEN  
RICHARD D. HOLE

DAVID M. PELLOW  
DAVID A. HOLSTEIN  
PAULA LAPIN SEIFTER  
THOMAS E. MYERS  
DONALD J. AQUILIO  
RANDOLPH E. PARKER  
LOUIS P. DILORENZO  
ROBERT D. ESSIG  
DAVID L. DAWSON  
THOMAS J. VALENTI  
BARRY R. KOGUT  
M. CATHERINE RICHARDSON  
DAVID R. SHERIDAN  
JOHN GAAL

\* ALSO ADMITTED TO FLA. BAR

CHARLES A. SCHOENECK, JR.  
HOWARD H. CANNON  
WILLIAM F. FITZPATRICK  
TRACY H. FERGUSON  
LYLE W. HORNBECK  
CHESTER H. KING, JR.  
N. FARLE EVANS  
FRANCIS E. MALONEY  
FRANCIS D. PRICE \*  
JAMES E. WILBER \*  
ANTON H. ZAHM  
HENRY R. MCCARTHY  
JAMES M. SULLIVAN, JR.  
RAYMOND W. MURRAY, JR.  
JOSEPH J. LAWTON, JR.  
GEORGE C. SHATTUCK  
LESLIE H. DEMING  
JOHN J. DEE  
JOHN A. BEACH  
CHARLES T. BEECHING, JR.

WILLIAM P. BURROWS  
JOHN M. FREYER  
ROBERT W. KOPP  
ARTHUR E. BONGIOVANNI \*  
JOHN S. FERGUSON  
CHARLES T. MAJOR  
ROBERT E. MOSES  
WILLIAM L. BERGAN  
ANTHONY S. PITTARELLI \*  
FRANCIS E. MALONEY, JR.  
WALLACE J. McDONALD  
JAMES D. FITZPATRICK  
STEPHEN L. JOHNSON  
JAMES E. MACKIN \*  
STEPHEN H. COHEN  
GARY R. GERMAIN  
THOMAS S. EVANS \*  
H. DEAN HEBERLIG, JR.  
THOMAS J. GROOMS  
RICHARD L. SMITH

November 2, 1978

Ms. Berthlynn Davis  
Secretary of the State Tax Commission  
Department of Taxation and Finance  
Tax and Finance Building 9  
State Campus  
Albany, New York 12227

Re: Dean R. and Anna M. DeWitt  
File No. 2-29269385

Dear Ms. Davis:

In connection with our telephone conversation yesterday on the status of this file, I thought it would be helpful to you to have the file number which is stated above.

Sincerely,

BOND, SCHOENECK & KING

By:

*Henry H. Melchor*  
Henry H. Melchor

HHM/km