

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

R. Thom & Beverly House :

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 Years 1970 - 1972. :

State of New York

County of Albany

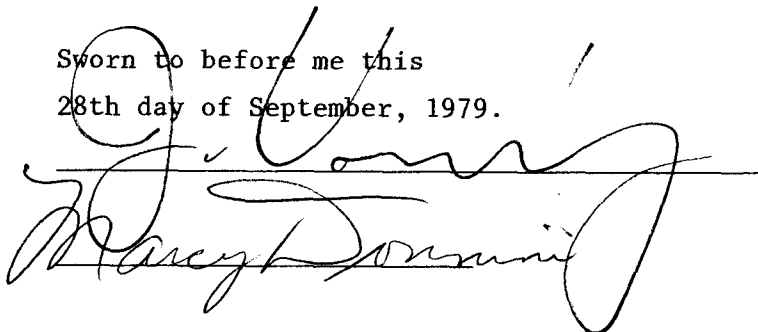
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon R. Thom & Beverly House, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

R. Thom & Beverly House
1033 Olmstead Dr.
Arnold, MD

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
28th day of September, 1979.



Nancy Dominici

STATE OF NEW YORK
STATE TAX COMMISSION

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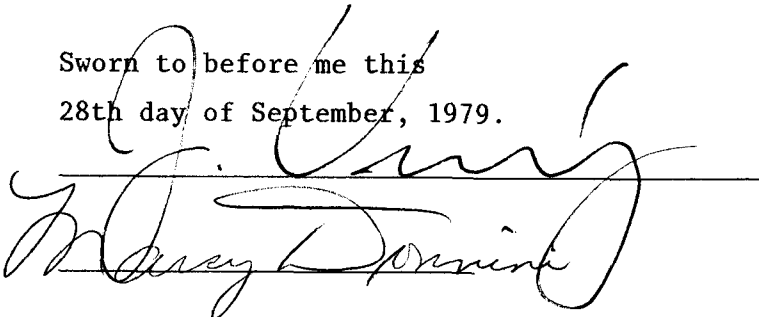
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Milton Kovner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Milton Kovner
51 East 67th St., Suite 2B
New York, NY 10021

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
28th day of September, 1979.



A handwritten signature in cursive script, likely of a notary public, is written over a horizontal line. The signature is highly stylized and difficult to decipher, but it appears to be a name starting with 'M' and ending with 'ink'.



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 28, 1979

R. Thom & Beverly House
1033 Olmstead Dr.
Arnold, MD

Dear Mr. & Mrs. House:

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,

cc: Petitioner's Representative
Milton Kovner
51 East 67th St., Suite 2B
New York, NY 10021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
R. THOM HOUSE and BEVERLY HOUSE : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1970, 1971, and 1972.

Petitioners, R. Thom House and Beverly House, 1033 Olmstead Drive, Arnold, Maryland, 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 1970, 1971 and 1972 (File No. 14964).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 1, 1978 at 2:45 P.M. Petitioners appeared by Milton Kovner, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State during 1970, 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, R. Thom House and Beverly House, filed New York State income tax nonresident returns for 1970 and 1971 on August 30, 1973, and for 1972 on March 18, 1974. Although these returns listed various items of income and losses, none were reported to be attributable to New York sources.

2. On Audit, the Income Tax Bureau issued a Notice of Deficiency dated May 24, 1976, along with an explanatory Statement of Audit Changes. Therein, petitioners were held to be residents of New York State during 1970, 1971, and 1972. All items of income and losses were thus held to be includible for New York State personal income tax purposes. In addition, adjustments were imposed for 1970 for petitioner's failure to comply with section 659 of the Tax Law. These adjustments were conceded to and are not at issue, except that they would only be applicable if petitioners were residents of New York State during 1970.

3. Prior to April 11, 1969, petitioners were domiciled in New York State and maintained a leased apartment in New York City.

4. As a result of an employment contract entered into with Paragon Hair Goods Ltd., petitioners and their children moved to Hong Kong on April 11, 1969. All their personal belongings and one or two pieces of furniture were transported to Hong Kong.

5. Petitioners continued to maintain their furnished New York City apartment during 1970, 1971 and 1972. Petitioner R. Thom House contended that the landlord refused to break the lease; therefore, he was obligated to continue paying the rent. He also contended that the lease was scheduled to expire during the early part of 1972, but was renewed due to his anticipated return.

6. Petitioners rented furnished quarters in Hong Kong until July 27, 1971, when those quarters, along with the furniture, were purchased by them.

7. Petitioners sent their children to English-speaking schools in Hong Kong. Petitioner R. Thom House was a member of the American Chamber of Commerce and of the Jockey Club, both in Hong Kong.

8. While in Hong Kong, petitioner's New York employer, Paragon Hair Goods Ltd., forwarded his salary to him. This salary was subjected to the withholding of payroll taxes, which included New York State and New York City personal income taxes.

9. While In Hong Kong, petitioner contended that he applied for and received permanent residency status from the government in Hong Kong. Petitioner maintained his U.S. citizenship.

10. Due to changing economic opportunities in Hong Kong, petitioner contended that he and his family returned to his apartment in New York City on December 21, 1972. However, Federal Form 2555 which was attached to the personal income tax nonresident returns filed for 1970 and 1971 indicated May 18, 1972 as their final return to the United States. All three of the aforementioned forms were filed under the status "physical presence", rather than the alternative available status of "bona fide residence."

CONCLUSIONS OF LAW

A. That petitioners, R. Thom House and Beverly House, were domiciliaries of New York State when they went to Hong Kong and that petitioners did not establish a new domicile in Hong Kong, within the meaning and intent of 20 NYCRR 102.2(d); therefore, petitioners continued to be domiciled in New York State during 1970, 1971 and 1972.

B. That petitioners, R. Thom House and Beverly House, were domiciled in New York State and maintained a permanent place of abode in New York State during 1970, 1971 and 1972; therefore, they were residents of New York State during these years, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

C. That the petition of R. Thom House and Beverly House is denied and the Notice of Deficiency issued on May 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER