

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Francis M. & Christa M. Jacobius :
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 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

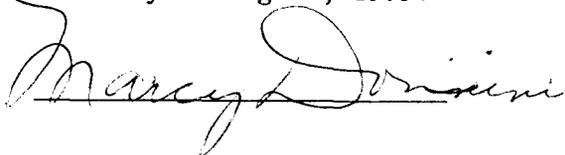
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Francis M. & Christa M. Jacobius, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

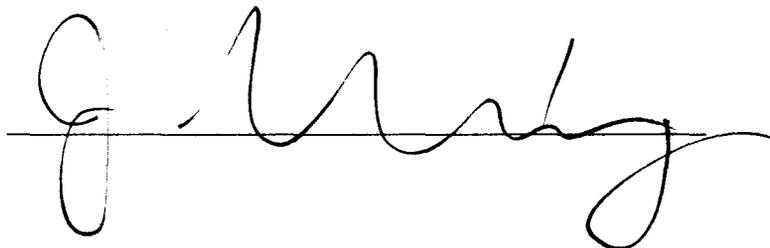
Francis M. & Christa M. Jacobius
Nash Rd.
Purdys, NY 10578

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
31st day of August, 1979.


Nancy Dominici





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 31, 1979

Francis M. & Christa M. Jacobius
Nash Rd.
Purdys, NY 10578

Dear Mr. & Mrs. Jacobius:

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 black ink, appearing to read 'John J. Sollecito', written in a cursive style.

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANCIS M. JACOBIOUS :
and : DECISION
CHRISTA M. JACOBIOUS :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioners, Francis M. Jacobius and Christa M. Jacobius, Nash Road, Purdys, New York 10578, 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 1971 (File No. 15271).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1978 at 2:45 P.M. Petitioner appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during 1971.

FINDINGS OF FACT

1. Petitioners, Francis M. Jacobius and Christa M. Jacobius, filed New York State resident and nonresident income tax returns for 1971, on which they claimed to be residents of New York State during the period July 1, 1971 through December 31, 1971. On said returns, they also excluded income earned during the period January 1, 1971 through June 30, 1971.

2. On November 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners asserting personal income tax of \$375.97, plus interest of \$58.89, for a sum of \$434.86. The Notice was issued on the grounds that petitioners did not change their domicile and that they were taxable on all income received from all sources.

3. Petitioner Francis M. Jacobius, M.D., was domiciled in New York State when he entered the United States Public Health Service in June of 1969, at which time he resided at 121 South Highland Avenue, Ossining, New York 10562. He vacated his New York apartment and moved his family to Talihina, Oklahoma, where he began work at the Talihina Indian Hospital.

4. Petitioner's employment with the United States Public Health Service was for a period of two years.

5. Petitioners registered their motor vehicles in Oklahoma, paid Oklahoma state income taxes and took an active part in community affairs.

6. In July of 1971, petitioner Francis M. Jacobius returned to New York State at the end of his tour of duty with the United States Public Health Service. When he approached the end of his tour of duty, he investigated a number of possibilities, but decided to return to New York State.

CONCLUSIONS OF LAW

A. That petitioners Francis M. Jacobius and Christa M. Jacobius were domiciliaries of New York State for 1971. The temporary removal from New York State for a limited period of time does not change the domicile of a resident of this State, and said domicile continues until a new one is established (20 NYCRR 102.2).

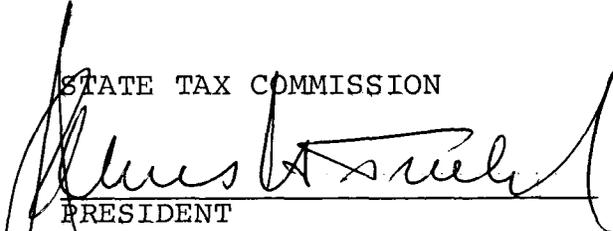
B. That petitioners did not effect a change of domicile, since their absence from New York State was for a particular purpose and for a limited period of time; therefore, petitioners are held to be New York State residents for the entire year, within the meaning and intent of section 605(a) of the Tax Law.

C. That the petition of Francis M. Jacobius and Christa M. Jacobius is denied and the Notice of Deficiency issued November 25, 1974 is sustained, together with such additional interest as may be lawfully owing.

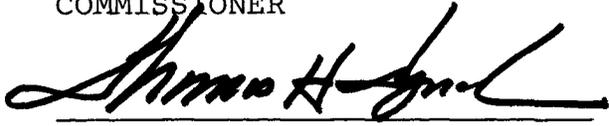
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER