

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. & Carol A. H. Luse :

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 1973. :

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 Robert H. & Carol A. H. Luse, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert H. & Carol A. H. Luse

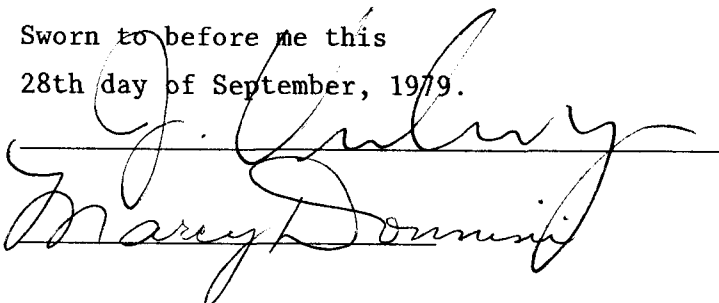
7 Morningside Dr.

Ballston Lake, NY 12019

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.



Mary Donnan

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

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Robert H. & Carol A. H. Luse :

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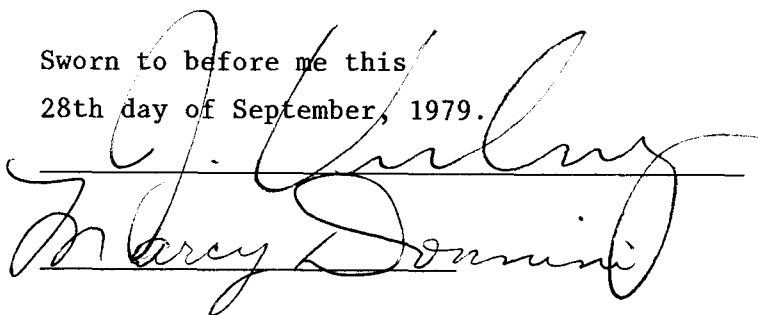
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Eugene M. Karp the representative of the petitioner in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

Mr. Eugene M. Karp
Kohn, Bookstein & Karp
100 State St.
Albany, NY 12207

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.



Mary Dominici

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Robert H. & Carol A. H. Luse
7 Morningside Dr.
Ballston Lake, NY 12019

Dear Mr. & Mrs. Luse:

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
Eugene M. Karp
Kohn, Bookstein & Karp
100 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT H. LUSE and CAROL A. LUSE	:	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, Robert H. Luse and Carol A. Luse, 7 Morningside Drive, Ballston Lake, New York 12019, 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. 12222).

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 October 27, 1978 at 1:00 P.M. Petitioners appeared by Eugene M. Karp, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York State to Australia in 1973.

FINDINGS OF FACT

1. Petitioners, Robert H. Luse and Carol A. Luse, filed New York State resident and nonresident income tax returns for 1973, on which they indicated that they were residents of New York State from January 1, 1973 to February 7, 1973.

2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners, imposing personal income tax of \$1,534.22, plus interest of \$117.35, less overpayment shown on returns of \$103.00, for a net amount due of \$1,548.57. The Notice was issued on the grounds that petitioners were deemed to be residents of New York State for income tax purposes for 1973.

3. Petitioner Robert H. Luse resided in New York State until February 7, 1973, where he was employed by the Hospital Association of New York. Subsequent to February 7, 1973 and pursuant to a commitment dated December 8, 1972, petitioner obtained employment with the Community Systems Foundation, located in Sydney, Australia, which employment was to last for a period of two years. As a result of said commitment, petitioners relinquished their New York residence; however, before leaving for Australia, petitioners first went to Florida.

4. Petitioners contended that in the event they failed to make Australia their permanent residence, it was their intention to reside permanently in Florida.

5. Petitioners neither renounced their United States citizenship, nor became immigrants of Australia.

6. Petitioners registered an automobile in Australia and obtained Australian driver's licenses.

7. Petitioners contended that they did not vote in the 1973 United States elections, but may have voted in Australian elections.

8. Petitioners had a new will drawn up and filed with attorneys in Australia.

9. In 1974 petitioners returned to the United States and established a residence in Connecticut.

CONCLUSIONS OF LAW

A. That petitioners failed to establish that their move to Australia was made with the bona fide intention of making their 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 (20 NYCRR 102(d)(2)).

B. That the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Less evidence is required to establish a change of domicile from one state to another than from one nation to another (Matter of Newcomb, 192 N.Y. 238, and Matter of Bodfish v. Gallman, 50 AD2d 457). A United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently (20 NYCRR 102.2(d)(3)). Petitioners failed to establish that they intended to remain in Australia permanently; therefore, petitioners are New York domiciliaries.

C. That since petitioners were domiciliaries of New York State during 1973 and did not satisfy all three of the criteria set forth in section 605(a)(1) of the Tax Law, which would have enabled them to be treated as nonresidents although domiciled in New York, they are New York State residents for 1973, within the meaning of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

D. That the petition of Robert H. and Carol A. Luse is denied and the Notice of Deficiency issued on May 19, 1975 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER