

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Barry & Susan Minsky :

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 19th day of October, 1979, he served the within notice of Decision by certified mail upon Leonard Broman 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. Leonard Broman
Sidney Finger & Co.
1501 Broadway
New York, NY 10036

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
19th day of October, 1979.

Mary D. ...

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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for Redetermination of a Deficiency or a Revision :
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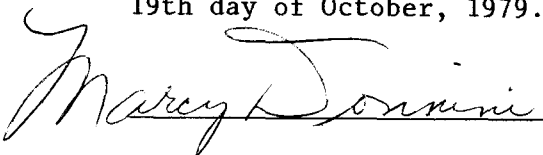
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Barry & Susan Minsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

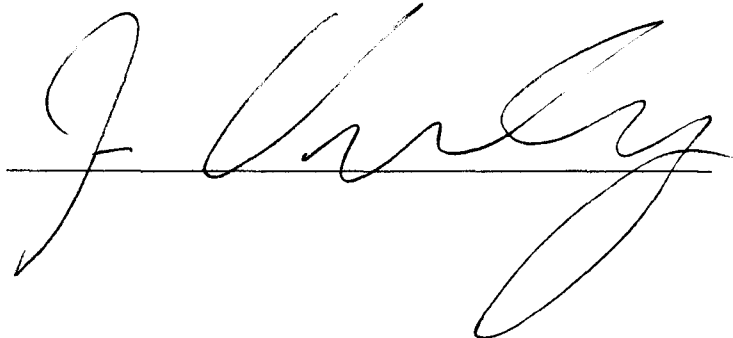
Barry & Susan Minsky
36 Sutton Pl. S.
New York, NY 10022

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
19th day of October, 1979.


Marcy Dominici


Jay Vredenburg

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

October 19, 1979

Barry & Susan Minsky
36 Sutton Pl. S.
New York, NY 10022

Dear Mr. & Mrs. Minsky:

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
Leonard Broman
Sidney Finger & Co.
1501 Broadway
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BARRY MINSKY and SUSAN MINSKY : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1972. :

Petitioners, Barry Minsky and Susan Minsky, 36 Sutton Place South, New York, New York 10022, 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 1972 (File No. 12725).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 10, 1977 at 1:15 P.M. Petitioners appeared by Leonard Broman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioners were New York residents for income tax purposes from May 1, 1972 to and including December 31, 1972.

FINDINGS OF FACT

1. Petitioners, Barry Minsky and Susan Minsky, timely filed both resident and nonresident New York State income tax returns for 1972. The returns indicated that petitioners were New York State residents during the period January 1, 1972 to April 30, 1972.

2. On November 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for \$3,011.99, plus interest of \$364.54, for a total of \$3,376.53 for 1972. This was done on the grounds that "It has not been shown that there was a bonafide [sic] intent to definitely and finally abandon your New York domicile and residence, and to acquire a new permanent domicile and residence elsewhere." Accordingly, a Notice of Deficiency was issued on November 25, 1974 for the same amount.

3. Petitioners timely filed a petition for redetermination of a deficiency or for refund of personal income tax for 1972, on the stated ground that "taxpayers moved to Canada with intention of being permanently domiciled there, and with the intention of making their fixed and permanent home there."

4. During the period from January 1, 1972 to and including April 30, 1972, the place of abode of petitioners was 260 West 22nd Street, New York, New York pursuant to a two year lease, the terms of which expired on or about May 31, 1972.

5. On or about May 8, 1972, petitioners entered into and executed a lease with Cadillac Development Corporation Limited for a "Suite" and "Carport" in "Plaza 100" at 100 Wellesley Street East, Toronto, Ontario, Canada, for a term of one year commencing June 1, 1972 and ending May 31, 1973.

6. On or about May 23, 1972, the household furniture and belongings of petitioners were moved by Allied Van Lines, Inc. from 260 West 22nd Street, New York, New York. They were delivered to 100 Wellesley Street East, Toronto, Ontario, Canada, on or about May 30, 1972.

7. Pursuant to application made by petitioner Barry Minsky on or about May 27, 1972, on behalf of himself and his wife, petitioner Susan Minsky, the

Department of Manpower and Immigration of Canada issued "Canadian Immigration Identification Cards," showing that petitioners "have been granted the status of Landed Immigrants in Canada effective from August 3, 1972."

8. Pending the issuance of said Immigration Identification Cards, the Department of Manpower and Immigration of Canada advised the "Manager, Canada Manpower Center," by letter dated May 27, 1972, that it had "received an application for permanent admission to Canada from Barry Minsky and wife Susan," and that "There is no objection on our part to the above named accepting employment, pending compliance with Immigration requirements."

9. Petitioner Barry Minsky applied to and was accepted as a member of the Ontario Health Insurance Plan; he was a participant in the Social Insurance Plan of Canada; he applied for and received Canadian license plates for his automobile; he applied for and received automobile insurance from Allstate Insurance Company of Canada; and, in connection with his moving to Canada, he withdrew the funds he had on deposit in the United States and deposited the same in Canada, except for a small account in the Chemical Bank to cover bills outstanding at the time of his departure for Canada.

10. During the period that petitioner Barry Minsky was in Canada, he was an organizer of and partner in Rising Day Productions, a Canadian partnership. Also, he endeavored to engage (as an entrepreneur) in aspects of the entertainment business in Canada, particularly the recording business, under the name of "Agape."

11. Petitioner Barry Minsky's efforts to engage in business in Canada, as well as his subsequent efforts to find a job in Canada relating to the recording or motion picture business, were unsuccessful. The result was that toward the middle of 1973, he "was running out of money."

12. At or about the expiration time of petitioners' lease on the aforesaid suite and carport at 100 Wellesley Street East, Toronto, Ontario, Canada, to wit, on or about May 31, 1973, petitioners contended that they moved from Canada to Florida where Mr. Minsky "took a position with a firm called Investors Economic Systems." Investors Economic Systems then advised petitioner Barry Minsky that it was closing its office in Florida. It offered him "the opportunity to continue with the firm" in New York, which he accepted. Petitioners contended that at the end of 1973 he moved back to New York with his wife. However, on September 6, 1973 petitioners' accountants in a letter to the Income Tax Bureau stated that "...[t]he Minsky's have since moved back to New York, in June 1973."

13. Prior to moving to Canada, petitioner Barry Minsky was employed by "Cinema Consultants" which was engaged in the entertainment business. Mr. Minsky did not sever his connection with Cinema Consultants when he left for Canada for the reason, (as he testified) that "monies were due me based on things I had done in the past" and "I wanted to continue to receive the income that was due me" and for the further reason that "if I could ever get anything happening in Canada we might be able to enter into a relationship, and I could possibly be the Canadian liaison with that office, if such a thing could develop."

14. Petitioners were citizens of the United States while they were in Canada.

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)). The general presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman, 50 AD 2d 457). Petitioners failed to establish by a preponderance of the evidence that they changed their domicile from New York in 1972.

B. That petitioners, Barry and Susan Minsky, were residents of New York State for 1972 in accordance with section 605(a)(1) of the Tax Law, and that their adjusted gross income is subject to New York personal income tax in accordance with section 612 of the Tax Law.

C. That the petition of Barry and Susan Minsky 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

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER