

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William D. & Nancy L. Mulholland :
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 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

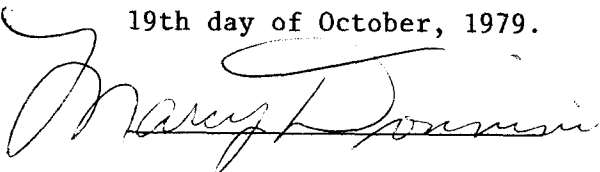
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Richard O. Loengard, Jr. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

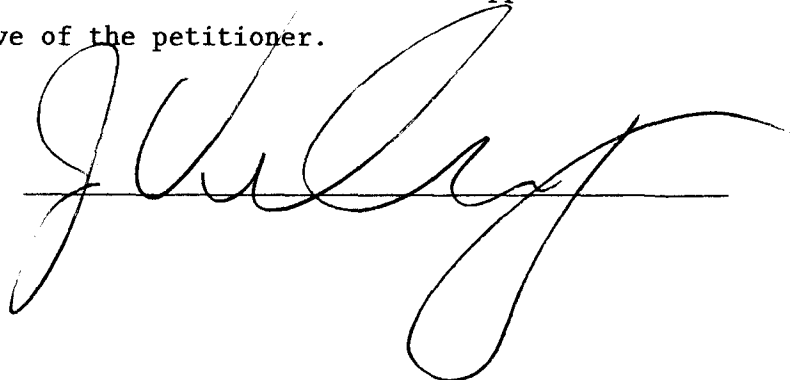
Mr. Richard O. Loengard, Jr.
Fried, Frank, Harris, Shriver & Jacobson
120 Broadway
New York, NY 10005

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.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William D. & Nancy L. Mulholland :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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Personal Income Tax :

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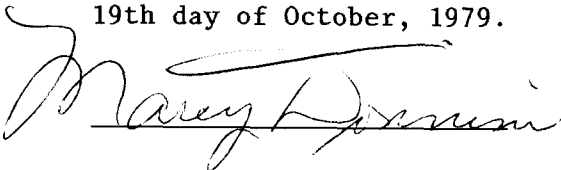
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon William D. & Nancy L. Mulholland, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

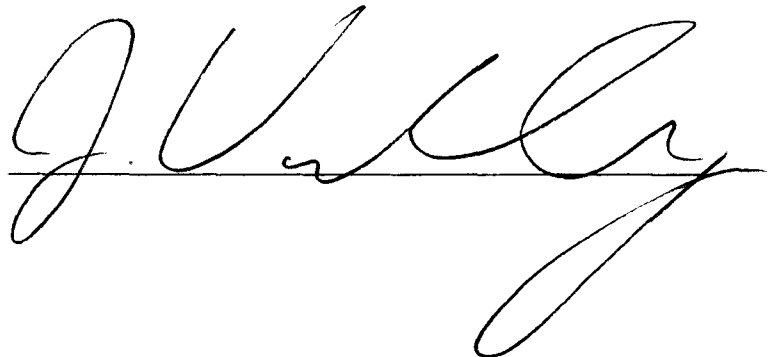
William D. & Nancy L. Mulholland
1296 Redpath Crescent
Quebec, Canada

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.


Nancy L. Mulholland


Jay Vredenburg

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

October 19, 1979

William D. & Nancy L. Mulholland
1296 Redpath Crescent
Montreal 109
Quebec, Canada

Dear Mr. & Mrs. Mulholland:

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
Richard O. Loengard, Jr.
Fried, Frank, Harris, Shriver & Jacobson
120 Broadway
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM D. MULHOLLAND, JR. :
and :
NANCY L. MULHOLLAND :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970. :

DECISION

Petitioners, William D. Mulholland, Jr. and Nancy L. Mulholland, 1296 Redpath Crescent, Montreal 109, Quebec, Canada, 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 1970 (File No. 13329).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1977 at 9:15 A.M. Petitioners appeared by Fried, Frank, Harris, Shriver & Jacobson, Esqs. (Michael L. Burak and Joel A. Poretsky, Esqs., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Jr. and Alfred Rubinstein, Esqs., of counsel).

ISSUE

Whether petitioners were domiciliaries and residents of New York State for all of 1970.

FINDINGS OF FACT

1. Petitioners, William D. Mulholland, Jr. and Nancy L. Mulholland, filed a joint New York State Income Tax Resident Return for 1970, on which they listed their period of New York residence as "from January 1, through January 5, 1970." On said return, petitioners reported total income for the entire taxable

year. They then reduced same by the amount reported on an attached schedule as being earned from sources without New York State during their purported non-resident period.

2. On October 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes, stating that petitioners were deemed to be domiciled in and residents of New York State for all of 1970. Based on the above, additional tax was asserted in the amount of \$14,757.42, plus interest of \$2,517.66, for a total due of \$17,275.08. Accordingly, a Notice of Deficiency was issued against petitioners under the same date.

3. While he was a partner in the New York investment banking firm of Morgan Stanley & Co., petitioner William D. Mulholland, Jr. worked on major financings for a Canadian corporation, Brinco Ltd. (hereinafter "Brinco"), a Morgan Stanley & Co. client. Following the death of its executive officers in an airplane crash on November 11, 1969, the Brinco Board of Directors turned to Mr. Mulholland, requesting that he assume leadership of the company. Effective December 31, 1969, he resigned as a partner of Morgan Stanley & Co. At that time, he withdrew his capital and severed all business connections with Morgan Stanley. On January 5, 1970, petitioner William D. Mulholland, Jr. left New York for Montreal, Canada, to commence his duties as president of Brinco, which office had been offered to him in November of 1969.

4. For several years prior to the year at issue, petitioner William D. Mulholland, Jr. spent considerable time in Canada, which time was devoted to business as well as to personal matters.

5. On December 24, 1969, Mr. Mulholland submitted an application for permanent residence in Canada to the Canadian Department of Manpower and Immigration. Upon entering Canada on January 5, 1970, his status was that of a "landed immigrant." Mr. Mulholland leased an apartment in Montreal, while his wife remained in New York so that their eight children could complete the school year there.

6. In April of 1970, petitioner William D. Mulholland, Jr. purchased a house in Montreal for \$135,000.99, to which he added renovations amounting to \$40,000.00. On June 29, 1970, his wife and children entered Canada. By August the renovations to the Montreal house were completed and petitioners and their children moved into it. At this time, petitioners' remaining personal belongings, their furniture, and other household effects in New York were shipped to Montreal, entering Canada as "Settler's effects."

7. Petitioners continue to own the house which they formerly occupied in Tuxedo, New York. In December of 1969, when Mr. Mulholland was elected president of Brinco, the house was undergoing substantial renovation. By March of 1970, the renovation was sufficiently advanced to allow the property to be advertised for sale; however, petitioners have been unable to sell the property. The house was leased from March 1, 1972 through February 28, 1974. Since the expiration of this lease, the tenants have remained on a month-to-month tenancy, while the property continues to be listed for sale.

8. Petitioners spent less than 183 days within New York State during the taxable year at issue.

9. In addition to their Montreal home, petitioners own a vacation home in Canada, in which they have invested approximately \$300,000.

10. Petitioner William D. Mulholland, Jr. still resides in Canada with his family, and is currently employed by the Bank of Montreal in the position of president.

CONCLUSIONS OF LAW

A. That petitioner William D. Mulholland, Jr. changed his domicile from New York State to Canada on January 5, 1970 within the meaning and intent of 20 NYCRR 102.2(d) (2), which provides, in part, the following:

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.

B. That although she remained in New York until June of 1970 for the express purpose of allowing her children to complete the school year, nevertheless, petitioner Nancy L. Mulholland changed her domicile from New York to Canada on January 5, 1970, within the meaning and intent of 20 NYCRR 102.2 (d) (5), which provides, in part, that "ordinarily a wife's domicile follows that of her husband."

C. That subsequent to January 5, 1970, petitioners William D. Mulholland, Jr. and Nancy L. Mulholland were not "resident individuals" of New York State, within the meaning and intent of section 605 of the Tax Law.

D. That the petition of William D. Mulholland, Jr. and Nancy L. Mulholland is granted and the Notice of Deficiency dated October 28, 1974 is cancelled.

DATED: Albany, New York

NOV 11 1979

STATE TAX COMMISSION

James W. Tuley
PRESIDENT

COMMISSIONER

Thomas H. Koerner
COMMISSIONER

Commissioner Koerner dissents

Milton Koerner

Commissioner