

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Carl & Muriel Stursberg :

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 Carl & Muriel Stursberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl & Muriel Stursberg

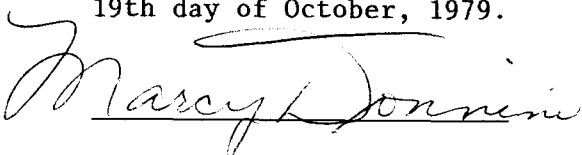
Harbor Lane

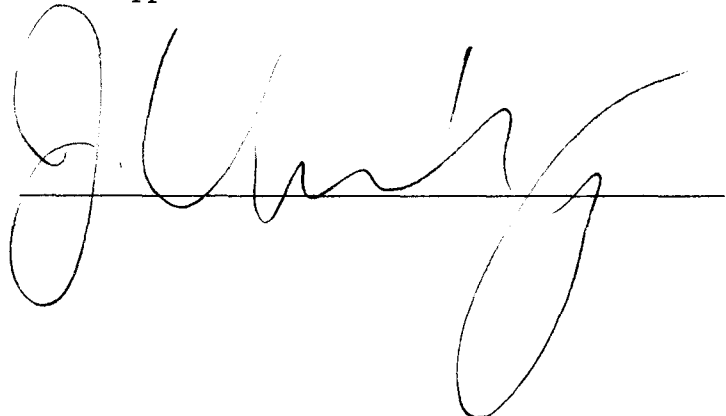
Roslyn Harbor, NY

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. Donnen



STATE OF NEW YORK
STATE TAX COMMISSION

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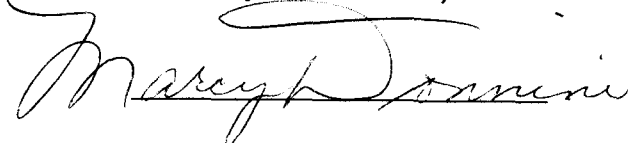
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Charles H. Levey the representative of the petitioner in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

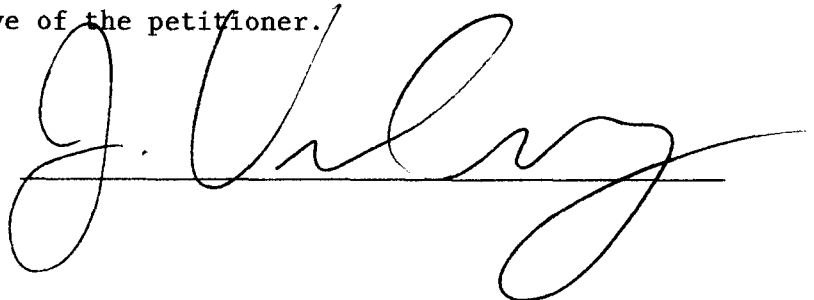
Mr. Charles H. Levey
1345 Ave. of the Americas
New York, NY 10019

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 Ann Dominici


Jay Vredenburg

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

October 19, 1979

Carl & Muriel Stursberg
Harbor Lane
Roslyn Harbor, NY

Dear Mr. & Mrs. Stursberg:

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
Charles H. Levey
1345 Ave. of the Americas
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CARL STURSBURG and MURIEL STURSBURG
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

DECISION

Petitioners, Carl and Muriel Stursberg, Harbor Lane, Roslyn Harbor, New York, 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. 11762).

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 October 26, 1977 at 9:15 A.M. Petitioners appeared by Charles H. Levey, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners effected a change of domicile from New York State to Florida on June 18, 1972.

FINDINGS OF FACT

1. Petitioners, Carl and Muriel Stursberg, filed a joint New York State Income Tax Resident Return for 1972, wherein they reported their period of New York residence as being January 1 to June 17, 1972.

2. On March 13, 1974, the Income Tax Bureau issued a Statement of Audit Changes to petitioners which stated the following:

Based on information submitted, it is considered that no change of domicile from New York State occurred in 1972. Accordingly, all income reported for Federal tax purposes is held taxable to New York State.

On December 22, 1975, a Notice of Deficiency was issued against petitioners, Carl and Muriel Stursberg, for \$17,494.26 in additional personal income tax, plus \$3,526.31 in interest, for a total due of \$21,020.57.

3. With the exception of interest income on joint bank accounts, all income earned by petitioners in 1972 was realized by Mr. Stursberg. Mrs. Stursberg was joined in the Notice of Deficiency by virtue of the filing of a joint return with her husband.

4. As early as 1970, Mr. Stursberg had tried to relocate from New York to Florida by buying a candy and tobacco business in Orlando. His offer was not accepted. Shortly thereafter, he joined STP Corporation as a consultant.

5. Over the 1971 Memorial Day weekend, Mr. Stursberg was elected executive vice-president of STP Corporation. Prior to his election, Mr. Stursberg discussed with company officers, the desirability of moving STP from Chicago to Florida. The move to Florida was considered to be entirely feasible and petitioner accepted said position, contingent upon the contemplated move. During the summer of 1971, however, business reverses were such that STP had to abandon plans to move to Florida. In September of 1971, Mr. Stursberg resigned from STP, since he had no desire to live in Chicago. A September 10, 1971 memorandum from the president of STP to all employees announcing Mr. Stursberg's resignation reads in part:

Frankly, a prerequisite of his employment was the (then-intended) move to Florida. Since the move to Florida was cancelled, Mr. Stursberg cannot remain as our Executive Vice-President, but he has accepted a continuance with our firm on special assignment. . .on a part-time basis.

6. In February of 1972, Mr. Stursberg was asked to come to Chicago for

further discussions with STP officers. The chairman of the Board of Directors and the president stated that if he were to join the company, the company would move from Chicago to Florida. If he (petitioner) did not join the company, then STP would take new space in Chicago where they could consolidate their operations under a single roof. Mr. Stursberg was offered the title of president and chief operating officer. The then president of STP was to become chairman of the Board of Directors and the then chairman was to become chairman of the Executive Committee. Mr. Stursberg agreed to these arrangements. On May 3, 1972, he executed a contract with STP to run from June 1, 1972 through May 31, 1975. The contract provided, in part, as follows:

6. You (Mr. Stursberg) agree that your services will be performed in the Ft. Lauderdale headquarters after the move and that you will move your residence to the State of Florida no later than July 1, 1973, failing which the Corporation may cancel this contract without further liability; you further agree that in the event you have not moved your residence to said state by September 1, 1972, you will thereafter pay all of your own living expense in said state and your place of residence, it being intended that except for emergencies, all such non-business travel or commuting will occur only during non-business hours, or on weekends or holidays.

* * *

10. If for any reason the Company fails to relocate its headquarters to Ft. Lauderdale, Florida, as contemplated, or having located its headquarters in Ft. Lauderdale shall relocate its headquarters elsewhere, and you are unwilling to perform your services elsewhere than in the southeast part of such State, you will have the right to refuse further assignments requiring performance of your duties elsewhere and by written notice to such effect to terminate this Agreement.

7. Mr. Walter Heinze, who early in 1972 was chairman of the Board of Directors of STP, testified at the hearing that had Mr. Stursberg not signed the employment contract with STP, the company would not have moved to Florida.

8. The move of STP from Chicago to Fort Lauderdale involved shifting some sixty people, as well as transporting office furnishings, records, and computer equipment.

9. On May 29, 1972, Mr. Stursberg left New York for Florida. He and his wife looked for a place to live in Florida. They selected a furnished apartment for which they signed a lease on July 5, 1972. The lease provided for a term commencing August 1, 1972 and ending October 31, 1973. The lease contained an option to renew for an additional term of two years. Petitioners shipped belongings and some furnishings to Florida.

10. One attraction of Florida for petitioners was the fact that Mrs. Stursberg's mother, father and two brothers resided there.

11. Petitioners had two children living with them, ages 17 and 18. They both were in their last year of high school in New York and were to graduate in June of 1973. Petitioners decided that it would be wise for both children to complete their senior year at the school they were already attending. To shift them at this point might jeopardize their chances of being admitted to the college of their choice. The children were cared for at petitioners' Roslyn Harbor home by an elderly housekeeper who had been with them for many years. Subsequent to the move, Mrs. Stursberg traveled back and forth between New York and Florida. Once the children were at school, she spent most of her time in Florida, coming up to New York once a month for a weekend.

12. The ownership of the Roslyn Harbor house was in the joint names of petitioners. Petitioners did not put it up for sale, but intended to dispose of the house as soon as their children graduated from high school. Mr. Stursberg testified that some six weeks after joining STP in Florida, he learned that considerable friction between the officers of STP and the officers of Studebaker Worthington Corporation (which owned 54% of the stock of STP) existed over the management of the company. This raised a question in the minds of petitioners as to how long the STP job might last. Mr. Stursberg testified that he had not realized this friction existed until he attended meetings of the Board of

Directors in July and August of 1972. (He had become a director of STP upon assuming the presidency.)

13. While in Florida, Mr. Stursberg purchased an automobile and registered it in his name in Florida. A 1970 Oldsmobile already owned by petitioners and registered in New York, was registered in Florida in the name of Mrs. Stursberg on October 16, 1972. A third car registered in Mr. Stursberg's name remained in New York and continued to be registered in this State.

14. In Florida, Mr. Stursberg opened accounts at three banks. He continued his savings and checking accounts in New York, maintained a safe deposit box in New York and continued to place stock orders with his New York broker by long distance telephone calls from Florida.

15. On September 19, 1972, Mr. Stursberg registered in Florida and voted in Florida in the presidential election of that year.

16. During the period June 18, 1972 to December 31, 1972, Mr. Stursberg spent a total of only twenty days in New York.

17. When Mr. Stursberg left New York for Florida to take up his duties as president and chief operating officer of STP, it was with the intention of making his fixed and permanent home in Florida.

CONCLUSIONS OF LAW

A. That the determination of intention to change domicile depends on the facts and circumstances of each case. Cohen v. Cohen, 129 NYS2d 476. Petitioner Carl Stursberg changed his domicile from New York to Florida on June 18, 1972.

B. That 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)). During 1972 Mr. Stursberg did not return to New York with the intention of making his fixed and permanent home here.

C. That ordinarily a wife's domicile follows that of her husband (20 NYCRR 102.2(d)(5)).

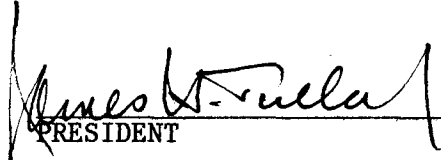
D. That petitioners, Carl and Muriel Stursberg, effected a bona fide change of domicile from New York State to Florida on June 18, 1972, and maintained such domicile through the close of the taxable year.

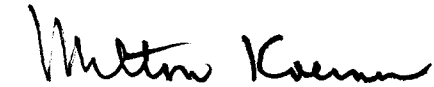
E. That the petition of Carl and Muriel Stursberg is granted and the Notice of Deficiency dated December 22, 1975 is cancelled.

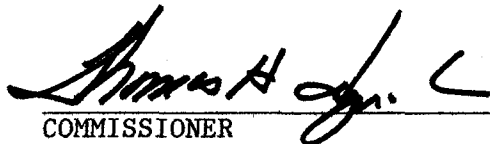
DATED: Albany, New York

STATE TAX COMMISSION

OCT 19 1979


PRESIDENT


COMMISSIONER


COMMISSIONER