

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert G. Allan, Sr. :
and Cecelia Allan (dec'd) : 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 1971. :

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 6th day of August, 1980, he served the within notice of Decision by certified mail upon Robert G. Allan, Sr., and Cecelia Allan (dec'd), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

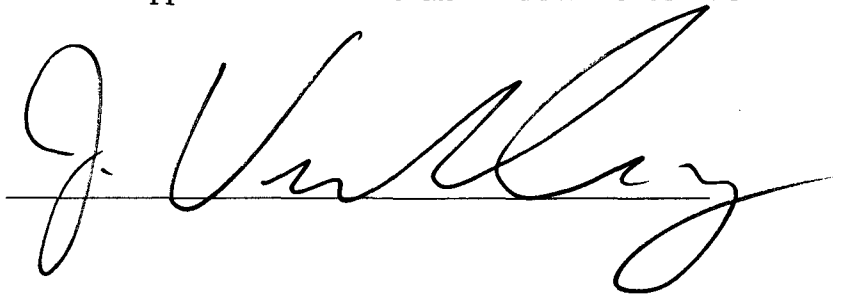
Robert G. Allan, Sr.
and Cecelia Allan (dec'd)
P.O. Box 3327
Fort Lauderdale, FL 33316

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
6th day of August, 1980.

Ectorah A. Bank



A large, stylized handwritten signature, likely of Jay Vredenburg, written over a horizontal line.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert G. Allan, Sr. :
and Cecelia Allan (dec'd) : 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 1971. :

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 6th day of August, 1980, he served the within notice of Decision by certified mail upon Thomas I. McElvein, Jr. and Gabriel Ferber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

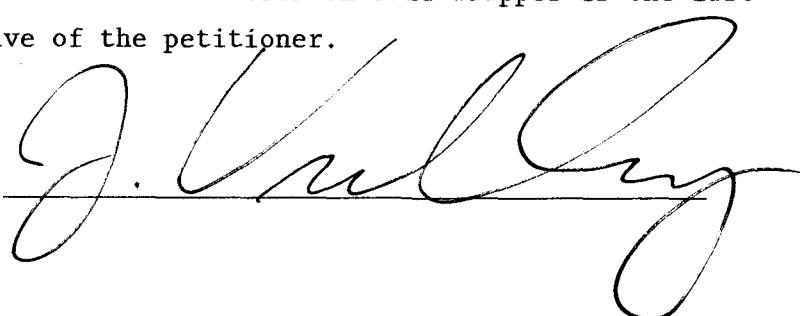
Sirs Thomas I. McElvein, Jr. and Gabriel Ferber
Davis, Nesper & McElvein
1120 Liberty Bank Bldg.
Buffalo, NY 14202

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
6th day of August, 1980.

Dectorah A Bank



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

August 6, 1980

Robert G. Allan, Sr.
and Cecelia Allan (dec'd)
P.O. Box 3327
Fort Lauderdale, FL 33316

Dear Mr. Allan:

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
Thomas I. McElvein, Jr. and Gabriel Ferber
Davis, Nesper & McElvein
1120 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT G. ALLAN, SR. and CECELIA ALLAN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioners, Robert G. Allan, Sr. and Cecelia Allan, P.O. Box 3327, Fort Lauderdale, Florida 33316, 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. 00035).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on October 25, 1977 at 1:15 P.M. Petitioners appeared by Thomas I. McElvein, Jr. and Gabriel Ferber, Esqs. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State and liable for New York State income taxes as resident individuals for the tax year 1971.

FINDINGS OF FACT

1. On February 25, 1974, the Audit Division issued a Statement of Audit Changes to petitioners, Robert G. Allan, Sr. and Cecelia Allan, detailing a tax deficiency resulting from its disallowance of a claimed change of domicile for the year 1971.
2. On February 25, 1974, the Audit Division issued a Notice of Deficiency to petitioners asserting a tax deficiency of \$25,747.88, plus interest of

\$2,387.30, less an overpayment on their return of \$4,364.00, for a total of \$23,771.18.

3. Petitioners resided in Batavia, New York for at least forty years and paid income tax as New York residents each of those years through 1970.

4. In late 1970, petitioners "moved" into their yacht located in Florida. In Florida, Mr. Allan leased a "slip" for his yacht. The lease had a one-year term and he has renewed the lease each year since 1970. Previous to the late 1970 move, Mr. Allan had entered into monthly docking agreements. On the 1971 lease, Mr. Allan listed his address as being in Batavia, New York.

5. Mr. Allan had decided to live on his yacht in Florida on the advice of his physician. His physician recommended it in hopes of extending Mr. Allan's life span and to ease the discomfort of chronic emphysema.

6. Petitioners attempted to sell their marital residence in Batavia, New York for several years. In 1970, as well as subsequent years, petitioners maintained the home and used the residence when they were in New York State.

7. The marital residence belonged to Cecelia Allan. However, since her death subsequent to 1971, Mr. Allan has had a life estate in the residence.

8. Petitioners spent seven to eight months of 1971 in Florida, but traveled to New York for the summer. While in New York, they stayed at their residence in Batavia, entertaining and renewing old friendships. They did spend some of their summertime with their children and grandchildren in New Jersey and Ohio. Petitioners maintained this pattern from 1971 up until the time of Mrs. Allan's death and Mr. Allan has maintained the same pattern, thereafter.

9. Mr. Allan registered and maintained his automobile in Florida, but maintained a New York driver's license in order to avoid the stress of a "road test" in his later years.

10. Mr. Allan executed in New York a complex will with trust clauses intended to survive him. He also created in 1971 an inter vivos trust of a substantial portion of his wealth and appointed various trusted New York acquaintances as trustees. Mr. Allan did discontinue various other New York banking and business relationships.

11. Mr. Allan did in 1971 and has since voted in New York, by absentee ballot.

12. Mr. Allan consults a Florida dentist when he requires dental treatment and no longer utilizes a New York dentist.

13. Mr. Allan changed his membership to nonresident status in an elite New York social club of which he had been a member for many years. He did join various social clubs in Florida.

14. Mr. Allan's averred intent to effect a change of domicile was supported by the uncontroverted testimony of a polygraph expert.

CONCLUSIONS OF LAW

A. That to change one's domicile requires an intent to give up the old and to take up the new, coupled with an actual acquisition of a new residence in the new locality. Babbin v. State Tax Commission, 67 A.D.2d 762. Absent such intent, the existing domicile will continue until a new one is established.

B. That the burden of proof is on the petitioners to prove that they had the required intention to effect a change in domicile. Such intent is measured by "whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it." Matter of Bodfish v. Gallman, 50 A.D.2d 457, 458. Even if it were to be conceded that petitioners evidenced an intent to abandon their New York domicile, they have not evidenced an intent to take up a new residence to which they have attached

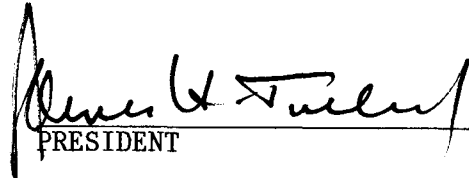
the full range of sentiment, feeling and permanent association required to establish a new domicile.

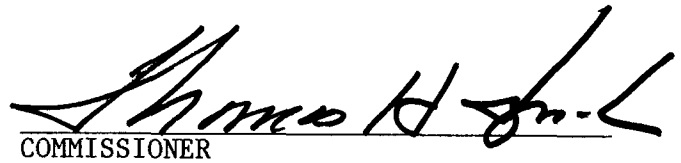
C. That the petition of Robert G. Allan, Sr. and Cecelia Allan is denied and the Notice of Deficiency dated February 25, 1974 is sustained.

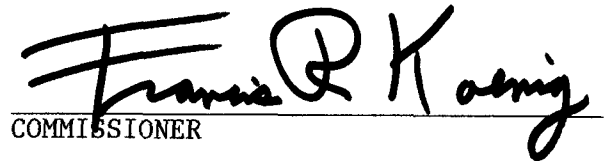
DATED: Albany, New York

STATE TAX COMMISSION

AUG 06 1980


PRESIDENT


COMMISSIONER


COMMISSIONER