

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Bernard S. & Mollie S. Cohen :

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 Years 1971 & 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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Bernard S. & Mollie S. Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard S. & Mollie S. Cohen
3841 N. 40th Ave.
Hollywood, FL 33021

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
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bernard S. & Mollie S. Cohen :

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for Redetermination of a Deficiency or a Revision :
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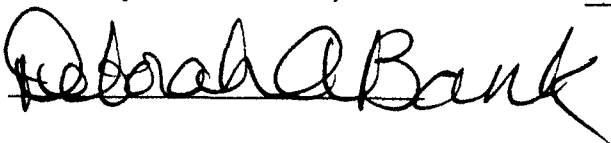
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon Murray Dichek the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

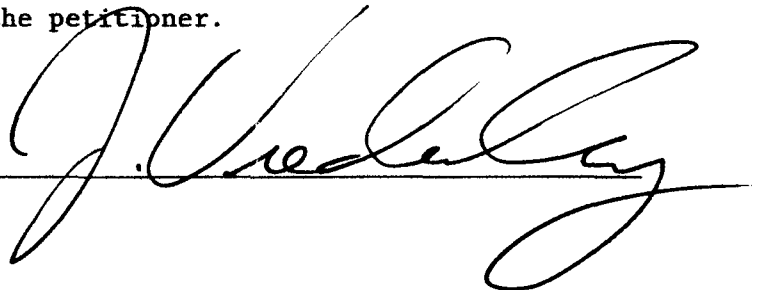
Mr. Murray Dichek
250 W. 57th St.
New York, NY 10019

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
14th day of November, 1980.


Deborah A. Bank


Jay Vredenburg

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

November 14, 1980

Bernard S. & Mollie S. Cohen
3841 N. 40th Ave.
Hollywood, FL 33021

Dear Mr. & Mrs. Cohen:

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
Murray Dichek
250 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BERNARD S. COHEN and MOLLIE S. COHEN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1971 and 1972. :

Petitioners, Bernard S. Cohen and Mollie Cohen, 3841 North 40th Avenue, Hollywood, Florida 33021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 15237).

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 20, 1978 at 1:15 P.M. Petitioners appeared by Murray Dichek, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irving Atkins and Samuel Freund, Esqs., of counsel).

ISSUES

- I. Whether petitioners were domiciliaries of New York State during 1971 and 1972.
- II. Whether petitioners are entitled to various deductions taken for the tax years involved and, if so, what is the amount of each deduction.

FINDINGS OF FACT

1. Petitioners, Bernard S. Cohen and Mollie S. Cohen, filed New York State income tax nonresident returns (IT-203) for 1971 and 1972 and a New York State Unincorporated Business Tax Return (IT-202) for 1972. Petitioner Bernard S. Cohen also filed a New York State Unincorporated Business Tax Return (IT-202) for 1971.

A consent extending the limitation on assessment of taxes for 1971, to April 15, 1976, was properly executed by the petitioners in December, 1974.

2. On June 11, 1975, the Audit Division issued a Statement of Audit Charges to Bernard S. Cohen and Mollie S. Cohen detailing tax deficiencies for 1971 and 1972. The deficiencies resulted from recalculating petitioners' tax due as residents rather than as nonresidents. (Petitioners filed as nonresidents based on their claim that they had lived in a condominium in Hollywood, Florida "for most of the time" since 1965.) Also, various deductions claimed were reduced or disallowed. Reduced deductions consisted of contributions overstated and casualty loss overstated. Disallowed deductions included automobile expense, motel and hotel lodging, airfares and rent.

3. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioners for 1971 and 1972 for a deficiency of \$3,096.35, plus interest of \$733.61, for a total of \$3,829.96.

4. Bernard S. Cohen was born in New York September 2, 1907. On petitioners' New York State income tax nonresident returns for 1971 and 1972, Mr. Cohen stated his occupation to be "sales and nursing home executive".

5. In 1970, petitioners moved to a new house in Hollywood, Florida. On May 4, 1970, Mr. Cohen registered to vote in Florida. Petitioners had obtained Florida driver's licenses in or prior to 1970.

6. On January 10, 1973, Mr. Cohen applied for an ad valorem tax exemption to the Assessor of Broward County, Florida. Two conditions for the granting of such an exemption are that the "Applicant must be 65 years of age or older and have been a permanent resident of this state for five consecutive years prior to January 1 of this year". No information was submitted to show what action was taken on the application by the Florida tax officials.

7. Although the petition in this matter indicated that petitioners had previously filed a certificate of domicile with the State of Florida, no such document was produced at the hearing.

8. In 1971 and 1972, Mr. Cohen was occasionally in New York to attend to his nursing home business. Mrs. Cohen sometimes would accompany him to New York for the purpose of visiting her daughters and grandchildren.

9. Prior to 1971, petitioners leased an apartment in Birchwood Towers, Bayside, Long Island. Due to high rent and infrequent use, petitioners sublet this apartment. Petitioners sold some of their furniture in the apartment and all of the carpeting and wall treatments to the sub-lessee. As for the balance of their personal belongings and furniture, some were moved to petitioners' new house in Hollywood, Florida, and some to a studio apartment leased by petitioners in Forest Hills, New York. The studio apartment was leased for the period September 1, 1971 to August 31, 1972. Petitioners never opened the cartons of books, dishes and bric-a-brac taken to the studio apartment and in less than one year, they moved out. Some of the furniture and cartons were given to petitioners' daughters living in New York and some to charities.

10. Petitioners did not spend more than 183 days in New York in 1971 or in 1972. Petitioners did not appear at the hearing to offer testimony as to their intent to establish a Florida domicile and abandon their New York domicile.

11. No credible evidence was offered to show that the reduction of some deductions and the disallowance of other deductions were incorrect.

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)]. To change one's domicile requires an intent to give up the old and take up the new (Matter of Newcomb, 192 N.Y. 238)

...The evidence to establish the required intention to effect a change of domicile must be clear and convincing (Ruderman v. Ruderman, 193 Misc. 85; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

B. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they were nondomiciliaries of New York State during the years at issue.

C. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they were entitled to deductions greater than those allowed by the Audit Division upon audit.

D. That the petition of Bernard S. Cohen and Mollie S. Cohen is denied and the Notice of Deficiency issued March 29, 1976 is sustained.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER