

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas F. Duff, Jr. :
Arlene V. Duff : 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Thomas F. Duff, Jr., Arlene V. Duff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

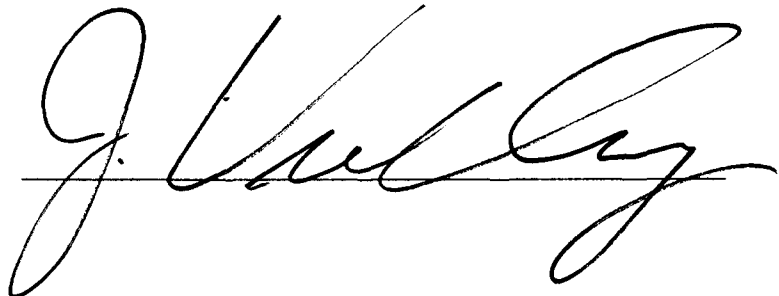
Thomas F. Duff, Jr.
Arlene V. Duff
41 Melbury Ct.
London W-8, ENGLAND

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
23rd day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Thomas F. Duff, Jr. :
Arlene V. Duff : 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Richard Dunn 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 Dunn
Rogers & Wells
200 Park Ave.
New York, NY 10017

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Thomas F. Duff, Jr.
Arlene V. Duff
41 Melbury Ct.
Kensington Hight St.
London W-8, ENGLAND

Dear Mr. & Mrs. Duff:

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 Dunn
Rogers & Wells
200 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THOMAS F. DUFF, JR. and ARLENE V. DUFF	:	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, Thomas F. Duff, Jr. and Arlene V. Duff, 41 Melbury Court, Kensington Hight St., London, W-8, England, 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. 13557).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1979 at 10:45 A.M. Petitioners appeared by Rogers & Wells (Richard Dunn, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (S. Freund, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciled in New York State during the year 1972; and if so, whether they have met the three conditions of section 605(a)(1) of the Tax Law qualifying them to be deemed nonresidents during the year 1972.

II. Whether a portion, or all, of the moving expenses incurred are deductible in the event petitioners are found to be residents of New York State during the year 1972.

FINDINGS OF FACT

1. Petitioners, Thomas F. Duff, Jr. and Arlene V. Duff, filed a New York State Income Tax Resident Return for the year 1972, on which they indicated

their period of New York residence as April 24, 1970 to February 23, 1972.

2. On August 26, 1974, the Income Tax Bureau issued a Notice of Deficiency, against petitioners for personal income tax due of \$2,121.09, plus interest and less an overpayment claimed on the return of \$118.00, along with an explanatory Statement of Audit Changes, on which petitioners were held to be residents of New York State during the entire year 1972. In addition, moving expenses which were not taken as a deduction on the New York State return were allowed and prorated by using the ratio of Federal taxable income earned outside the United States to total income from sources outside the United States.

3. Petitioner Thomas F. Duff, Jr. a native of New York State, became employed by the General Motors Corporation ("GMC") in April, 1961. In June, 1965, petitioner, while still residing in New York State, requested an overseas assignment.

4. In April, 1966, petitioner Thomas F. Duff, Jr., was assigned to the Venezuela office of General Motors Overseas Corporation ("GMOC"). Both petitioners and their children abandoned their living quarters in New York State and entered Venezuela on a transient visa. All furniture and personal property were transported to Venezuela, where they rented an apartment.

5. In February, 1969, and again in November, 1969, petitioner Thomas F. Duff, Jr., contracted diseases endemic to the Venezuelan climate. On his doctor's recommendation, petitioner returned to the United States and was admitted for treatment at St. Claire's Hospital, located in New York City. Due to his illness and his doctor's recommendation, petitioner requested a temporary transfer to a Northern climate. GMOC granted his request and transferred him to its New York headquarters during the early part of 1970. Subsequently, petitioners purchased a home in Peekskill, New York, which they occupied until January 4, 1972.

6. In October, 1971, petitioner Thomas F. Duff, Jr., accepted an assignment in Belgium and began a training course in anticipation of the transfer.

7. In late November, 1971, GMOC agreed to purchase petitioners' home in Peekskill, New York, a transaction which was finalized on January 19, 1972.

8. On January 4, 1972, petitioners and their children, vacated their home in Peekskill, New York, and rented quarters at the Hotel Maurice, in New York State until January 8, 1972.

9. As part of his training in anticipation of the transfer to Belgium, petitioner was required to visit several plants in the State of Michigan, and accordingly, resided in various motels in that state.

10. On February 17, 1972, petitioner and his family returned to New York State and stayed at a Holiday Inn, in Yonkers, New York, for the purpose of arranging a flight to Belgium, receiving final instructions from GMOC and saying "good-bye" to relatives.

11. On February 23, 1972, petitioners and their children left New York State for Belgium, where they resided at hotels until mid-May, 1972. At such time, they rented permanent quarters in Belgium until May 29, 1977, when they departed for England on a new assignment for GMOC.

12. Petitioners contended that they spent approximately 18 days in the State of New York during 1972.

13. Petitioners claimed a moving expense deduction of \$7,483.00 on their Federal income tax return for 1972. In addition, petitioners reported moving expense reimbursements of \$16,027.00, and an exclusion of income earned abroad of \$19,016.00 in accordance with section 911 of the Internal Revenue Code. Petitioners indicated that their status for claiming the exclusion was "physical presence" rather than "bona fide residence", as distinguished by sections 911(a)(1) and 911(a)(2) of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That petitioners, Thomas F. Duff, Jr. and Arlene V. Duff, were domiciled in the State of New York during the entire year 1972 in accordance with the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(d).

B. That petitioners, Thomas F. Duff, Jr. and Arlene V. Duff, did not maintain a permanent place of abode outside New York State during the entire year 1972 as required by section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), and accordingly, are subject to New York income tax as residents for the entire year 1972.

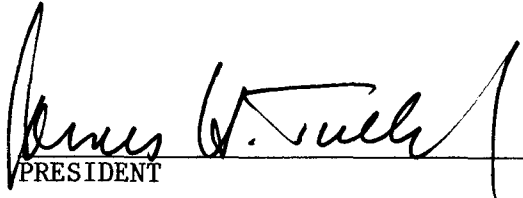
C. That the Income Tax Bureau properly allocated the moving expense deduction in accordance with the meaning and intent of section 911(a) of the Internal Revenue Code, section 1-911-2(d)(b) of the Treasury Regulations, as applicable for the year 1972 and sections 607(a) and 612(a) of the Tax Law.

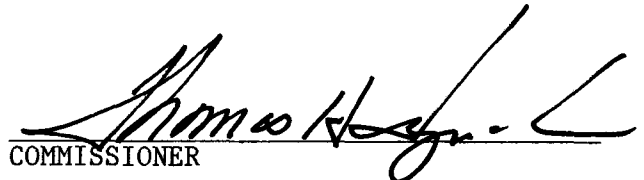
D. That the petition of Thomas F. Duff, Jr. and Arlene V. Duff, is denied and the Notice of Deficiency issued August 26, 1974 for the year 1972 is sustained, together with such additional interest as may be lawfully owing.

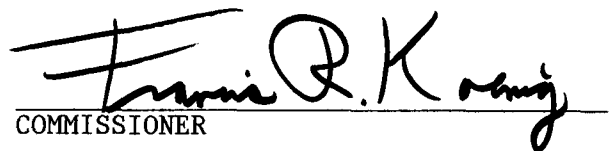
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER