

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
James P. Freeborn :
c/o Barrett, Knapp, Smith, Schapiro & Simon : 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 1969. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon James P. Freeborn, c/o Barrett, Knapp, Smith, Schapiro & Simon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James P. Freeborn
c/o Barrett, Knapp, Smith, Schapiro & Simon
26 Broadway
New York, NY 10004

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
11th day of April, 1980.

Joanne Knapp

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
James P. Freeborn :
c/o Barrett, Knapp, Smith, Schapiro & Simon : 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 1969. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon John J. Lynch the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

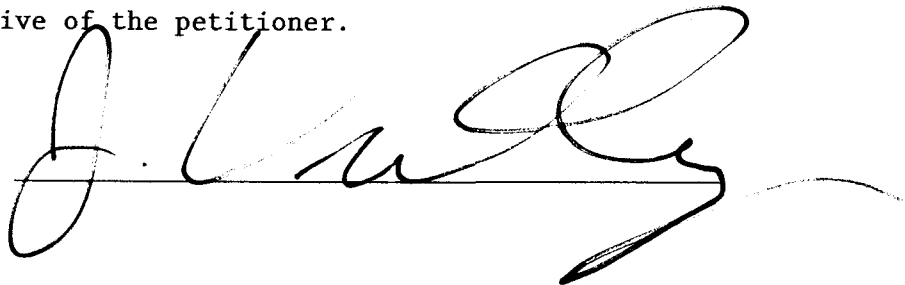
Mr. John J. Lynch
Barrett, Knapp, Smith, Schapiro & Simon
26 Broadway
New York, NY 10004

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
11th day of April, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of John J. Lynch, is written over a horizontal line. The signature is in dark ink and features a prominent loop at the end.

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

April 11, 1980

James P. Freeborn
c/o Barrett, Knapp, Smith, Schapiro & Simon
26 Broadway
New York, NY 10004

Dear Mr. Freeborn:

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
John J. Lynch
Barrett, Knapp, Smith, Schapiro & Simon
26 Broadway
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES P. FREEBORN	:	DECISION
for Redetermination of a Deficiency or for Re-	:	
fund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1969.	:	

Petitioner, James P. Freeborn, c/o Barrett, Knapp, Smith, Schapiro & Simon, 26 Broadway, New York, New York 10004, 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 1969 (File No. 15281).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1978 at 1:15 P.M. Petitioner appeared by Barrett, Smith, Schapiro & Simon (John J. Lynch, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioner was domiciled in New York State during the year at issue and was a resident individual of New York State for personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, James P. Freeborn, filed a New York State Income Tax Resident Return for 1969 on which he indicated he was a resident of New York from January 1, 1969 to March 1, 1969.

2. On November 23, 1971, the Income Tax Bureau issued a Statement of Audit Changes calculating additional personal income tax of \$9,713.92 on the basis that petitioner was a domiciliary of New York for 1969 and was taxable as a resident of New York for the full year.

On March 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the amount of \$9,713.92, plus interest of \$1,717.42 for a total of \$11,431.34.

3. Petitioner, James P. Freeborn, was born in France on March 23, 1918. In 1941, petitioner moved to the United States and became a resident of the State and City of New York.

4. During the period herein involved, petitioner was a United States citizen.

5. Petitioner was an employee of W. R. Grace & Company from 1946 through the date of the hearing. The corporate headquarters of W. R. Grace & Company is located within the City of New York.

6. During the course of his employment with W. R. Grace & Company, petitioner was given a number of out-of-state assignments. From 1948 to 1952, he resided in Maryland while working in Washington, D. C., on behalf of Grace. From 1954 to 1956 he was assigned to Ecuador. From 1960 to 1964 and again from 1969 to 1971, he was assigned to Peru.

7. Petitioner returned to New York after each of his assignments set out in Finding of Fact "6", residing within this State from 1946 to 1948, 1952 to 1954, 1956 to 1960, 1964 to 1969, and in 1971 following his return from Peru until September of 1974.

8. Throughout all relevant periods, petitioner entertained a hope of some day returning to France to live.

9. Petitioner sold his New York cooperative apartment in 1969 when he was assigned to Peru. Petitioner's family accompanied him to Peru in 1969.

10. Petitioner spent more than thirty days in the aggregate in New York in 1969.

11. Petitioner never intended to remain in Peru beyond a definite two to four-year period. He never viewed his Peruvian residence as permanent or of indefinite duration.

12. Petitioner claimed no domicile within the United States during 1969.

13. Petitioner's will contains a provision requiring probate within the State of New York and according to its law.

14. Petitioner filed U.S. income tax returns for 1969 and paid required Peruvian taxes in 1969.

15. During the period herein involved, petitioner never took any positive steps to change his domicile to Peru; neither did petitioner renounce his United States citizenship nor make any attempt to obtain Peruvian citizenship during the period at issue.

16. Petitioner has not established that New York was not the place to which he intended to return when he was absent in Peru.

CONCLUSIONS OF LAW

A. That petitioner's intention of remaining in Peru, South America, for a definite two to four-year period effected no change in domicile.

B. That petitioner's invariable return to New York after each of his foreign assignments, his lack of any other abode or asserted domicile during his periods of New York residence, and his failure to establish an intent to regard any other place as his permanent home result in his being a domiciliary of New York State throughout 1969.

C. That petitioner's New York domiciliary status in New York in 1969, coupled with his spending more than thirty days in the aggregate in New York in 1969, result in his being a resident individual of New York within the meaning

of section 605(a) (1) of the Tax Law.

D. That the petition of James P. Freeborn is denied and the Notice of Deficiency issued on March 26, 1973 is sustained.

DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER