

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

H. Max & Elizabeth Healey :

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 1973. :

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 15th day of February, 1980, he served the within notice of Decision by certified mail upon H. Max & Elizabeth Healey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Max & Elizabeth Healey
5445 N. Sheridan Rd., Apt 3902
Chicago, IL 60640

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
15th day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 15, 1980

H. Max & Elizabeth Healey
5445 N. Sheridan Rd., Apt 3902
Chicago, IL 60640

Dear Mr. & Mrs. Healey:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
H. MAX HEALEY and ELIZABETH HEALEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioners, H. Max Healey and Elizabeth Healey, 5445 N. Sheridan Road, Apt. 3902, Chicago, Illinois 60640, 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 1973 (File No. 12112).

On September 20, 1978, petitioners informed the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioners were residents and domiciliaries of New York State for the entire year of 1973.

FINDINGS OF FACT

1. Petitioners filed a timely New York State Resident Income Tax Return for the year 1973. On this return petitioners claimed to be New York State residents from January 1, 1973 to August 31, 1973. Petitioners subtracted \$14,784.00 from total Federal adjusted gross income of \$31,164.00, on the grounds that this income was earned after August 31, 1973 and therefore was not subject to New York State tax.

2. On July 28, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, H. Max and Elizabeth Healey, imposing additional New York State personal income tax for 1973 on the grounds that petitioners did not lose their status as New York residents. Accordingly, the Income Tax Bureau issued a Notice of Deficiency for \$1,567.70, plus interest of \$34.76, less overpayment on return of \$1,207.00, for an amount due of \$395.46.

3. On July 25, 1973, petitioner H. Max Healey signed a five-year employment agreement with Bahamasair Holdings Limited ("Bahamasair") to become its president and chief executive officer. He resigned his position with his New York employer, American Airlines, as of August 31, 1973 and took up his new position with Bahamasair in Nassau, Bahama Islands, beginning September 1, 1973. Petitioners paid a large indemnity for cancellation of the lease on their New York apartment, which they had occupied for more than five years. All personal property and household effects were removed from the New York premises on August 26 and 27, 1973, and transported to either Nassau, Bahama Islands, or to Madison, Indiana, for permanent storage.

4. On October 5, 1973, petitioner H. Max Healey obtained from the Director of Immigration for the Bahama Islands, a permit to engage in a gainful occupation and thereby was authorized to enter and remain in the Bahama Islands until September 28, 1978. Under the permit, Mr. Healey was required to be in possession of a valid passport and could not engage in any gainful occupation other than the one specified on the permit. Petitioners contended that they were both domiciliaries and residents of the Bahama Islands for an uninterrupted period beginning September 1, 1973, until the termination of petitioner H. Max Healey's employment on March 27, 1974.

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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home." [20 NYCRR 102.2(d)(2)].

The general presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Newcomb, 192 NY 238; Matter of Bodfish v. Gallman, 50 AD 2d 457).

B. That although petitioners moved to Bahama Islands with the intention that petitioner H. Max Healey would work there, and said petitioner obtained the necessary approvals from the Bahamian officials and thus petitioners' decision to become residents of the Bahama Islands was related to Mr. Healey's employment; nevertheless, petitioners' domicile remains in New York.

"... (A) United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return." [20 NYCRR 102.2(d)(3)].

The petitioners have failed to sustain the burden of proof that they intended to remain in the Bahama Islands permanently and petitioner's H. Max Healey's employment there was only incidental to said fact in accordance with section 689(e) of the Tax Law.

C. That since petitioners were domiciliaries of New York during 1973, maintained a permanent place of abode in New York from January 1 through August 31, 1973 and spent more than 30 days in New York State during said year, they did not satisfy the requirements so as not to be deemed residents, although domiciled

in New York. They were, therefore, resident individuals in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

D. That the petition of H. Max Healey and Elizabeth Healey is denied and the Notice of Deficiency issued on July 28, 1975, is sustained, together with such additional interest as may be legally owing.

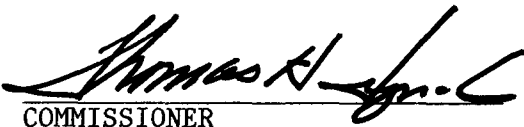
DATED: Albany, New York

FEB 15 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER