

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Richard & Sonja V. Irwin :

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 1970. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Richard & Sonja V. Irwin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard & Sonja V. Irwin
114 Deepwood Dr.
Chappaqua, NY 10514

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
28th day of November, 1980.

Ectorah A Bank

J. Vredenburg

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

November 28, 1980

Richard & Sonja V. Irwin
114 Deepwood Dr.
Chappaqua, NY 10514

Dear Mr. & Mrs. Irwin:

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	:	
RICHARD IRWIN AND SONJA V. IRWIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1970.	:	

Petitioners, Richard Irwin and Sonja V. Irwin, 114 Deepwood Drive, Chappaqua, New York 10514, 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 1970 (File No. 13801).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1980 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

- I. Whether petitioners changed their domicile from New York State to Belgium during 1970;
- II. Whether they may obtain a credit against their New York State personal income tax for taxes paid to Belgium if petitioners did not change their domicile.

FINDINGS OF FACT

1. Petitioners, Richard Irwin and Sonja V. Irwin, filed New York State resident and nonresident income tax returns for 1970, on which they indicated that they were residents of New York State from January 1, 1970 through February 28, 1970.

2. On September 25, 1972, the Audit Division issued a Notice of Deficiency against petitioners, asserting personal income tax of \$1,472.75, plus interest of \$127.60, for a total of \$1,600.35. The Notice was issued on the grounds that a temporary or limited employment assignment outside the United States did not change petitioners' status as New York residents.

3. Petitioner Richard Irwin for subject year was employed by International Telephone and Telegraph ("ITT") with offices located in New York City.

Under date of February 28, 1970, petitioner Richard Irwin was assigned by "ITT" to its offices in Brussels, Belgium, where he remained for approximately four (4) years. In 1974, petitioner was reassigned to New York State, by "ITT" and continued his employment with "ITT".

4. Petitioner Richard Irwin contended that his removal to "ITT's" Brussel's office was a permanent assignment, and he intended to change his domicile to Belgium and to remain there for an indefinite period.

5. Petitioner Richard Irwin further contended that prior to removal to Belgium, he obtained a permanent visa for himself and family, a Belgium work permit for himself, a Belgium driving license, enrolled his children in school in Belgium, and leased an apartment for nine years.

In addition, petitioner Richard Irwin also contended that his failure to obtain membership in the New York Bar and retention of his membership in the Virginia Bar is an indicia that he did not intend to make New York his permanent home.

6. Petitioners neither renounced their United States citizenship nor became immigrants of Belgium.

7. For subject year petitioners paid income taxes to Belgium. It is their contention that the payment of said taxes was an indicia of their intent to make Belgium their permanent domicile. Alternatively, petitioners argue

that taxes paid to Belgium be credited against their New York State personal income taxes.

CONCLUSIONS OF LAW

A. That petitioners failed to establish that their move to Belgium was made with the bona fide intention of making their 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 (20 NYCRR 102(d)(2)).

B. That the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Less evidence is required to establish a change of domicile from one state to another, than from one nation to another (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman, 50 A.D.2d 457). 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 (20 NYCRR 102.2(d)(3)). Petitioners failed to establish that they intended to remain in Belgium permanently; therefore, petitioners are New York domiciliaries.

C. That since petitioners were domiciliaries of New York State for 1970, and failed to satisfy all three of the criteria set forth in section 605(a)(1) of the Tax Law, which would have enabled them to be treated as nonresidents although domiciled in New York, they are New York State residents for 1970 within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(a).

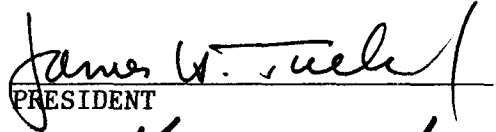
D. That the foreign income tax paid by petitioners to Belgium is not allowed as a credit against the New York State personal income tax due for 1970 within the meaning and intent of section 620 of the Tax Law.

E. That the petition of Richard Irwin and Sonja V. Irwin is denied and that the Notice of Deficiency dated September 25, 1972 is sustained, together with any additional interest legally owing.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 28 1980


PRESIDENT


COMMISSIONER


COMMISSIONER