

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Murray & Gladys Karnell :
: 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 1968. :
_____ :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Murray & Gladys Karnell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray & Gladys Karnell
1201 South Hillcrest
Hollywood, FL

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Murray & Gladys Karnell :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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for the Year 1968. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Mark Weingten 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. Mark Weingten
250 West 57 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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Murray & Gladys Karnell
1201 South Hillcrest
Hollywood, FL

Dear Mr. & Mrs. Karnell:

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
Mark Weingten
250 West 57 St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MURRAY KARNELL and GLADYS KARNELL : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1968. :

Petitioners, Murray Karnell and Gladys Karnell, 1201 South Hillcrest Court, Hollywood, Florida, 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 1968 (File No. 13248).

A formal hearing was scheduled before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, for November 16, 1977 at 9:15 A.M.; however, at that time, petitioners chose to submit their case for determination based upon the records contained in the file.

ISSUE

Whether petitioners, domiciliaries of New York State during 1966 and 1967, who rented, maintained, and resided in a New York apartment for part of 1968, were and continued to be domiciliaries of New York State for 1968, and therefore, liable for personal income taxes as resident individuals of New York State.

FINDINGS OF FACT

1. Petitioners, Murray Karnell and Gladys Karnell, filed a joint New York State Income Tax Nonresident Return for the year 1968, showing no income attributable to New York State.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners for 1966, 1967 and 1968 in the amount of \$8,087.63, plus interest of \$2,166.47 for a total of \$10,254.10. Accordingly, a Notice of Deficiency was issued therefor. The deficiency was based, for the most part, on a finding that petitioners were New York residents for 1968. (the remainder was attributable to Federal changes for the year 1966 and 1967 and is not at issue).

3. On July 25, 1965, petitioners, Murray Karnell and Gladys Karnell, entered into an agreement to lease an apartment in Hollywood, Florida. Said lease was signed on January 22, 1966 and ran for period of 99 years. At that time petitioners owned a permanent home in Harrison, New York.

4. Petitioners sold their Harrison, New York, residence some time after the acquisition of the Hollywood, Florida, apartment. The final closing on the Harrison residence took place in May of 1967.

5. Petitioners remained listed at the Harrison, New York address in the 1967-1968 Westchester telephone directory.

6. In 1966 petitioners rented an apartment at 56 Doyer Avenue, White Plains, New York, pursuant to a three-year lease. After an eight-month occupancy, petitioners terminated their lease.

7. Petitioners were listed in the 1969-1970 Westchester telephone directory at 56 Doyer Avenue, White Plains, New York.

8. Late in 1967, petitioners rented an apartment at 2 Old Mamaroneck Road, White Plains, New York, and lived there from May through August of 1968.

9. Petitioners were listed in the 1971-1972 Westchester telephone directory at the 2 Old Mamaroneck Road address.

10. Petitioners have conceded that they were domiciliaries of New York State in both 1966 and 1967.

11. Petitioner Murray Karnell filed a Florida voter registration card on January 14, 1969. A one-year residency is required by the State of Florida before such a registration card can be filed. Florida domicile is not a prerequisite of filing.

12. Petitioners have not shown (though they were repeatedly requested to do so by the New York State authorities) that they ever filed a declaration of intent to change domicile with the State of Florida, pursuant to section 222.17 of the Florida Statutes which is a procedure for manifesting and evidencing an intention to acquire Florida domicile.

13. Findings of Fact "3", "5" through "10" and "12" establish that petitioners never intended to abandon their New York domicile in 1968.

CONCLUSIONS OF LAW

A. That petitioners, Murray Karnell and Gladys Karnell were domiciliaries of New York State in 1968.

B. That since petitioners were domiciled in New York State and maintained a permanent place of abode in this state and spent in the aggregate more than thirty days in this State during 1968, they were resident individuals of New York State within the meaning of section 605(a) of the Tax Law.


C. That the petition of Murray Karnell and Gladys Karnell is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER