STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of William & Nancy LeClair 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.	: : : : :	AFFIDAVIT OF MAILING

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon William & Nancy LeClair, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Nancy LeClair
Customs Cottage
Chateaugay, NY 12920

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
18th day of July, 1980.

Deborah A. Bank

J. Vredenburg

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

July 18, 1980

William & Nancy LeClair
Customs Cottage
Chateaugay, NY 12920

Dear Mr. & Mrs. LeClair:

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 WILLIAM AND NANCY LeCLAIR for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1973.	DECISION

Petitioners, William and Nancy LeClair, Customs Cottage, Chateaugay, New York 12920, 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. 18195).

A formal hearing was held before Jerome M. Hesch, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on July 24, 1979 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether William LeClair was a resident individual of New York State during the year 1973.

II. Whether petitioners are entitled to change their election to take advantage of itemized deductions.

FINDINGS OF FACT

1. On February 28, 1977, the Audit Division issued a Notice of Deficiency asserting personal income tax of $2,464.00, plus interest of $531.09, for a sum of $2,995.09. The Notice was issued on the ground that petitioner did not change his New York residence and, therefore, was taxable on income received from all sources.

2. Petitioner William LeClair (hereinafter "petitioner") has been continuously employed by the U.S. Customs Service of the United States Treasury Department since 1962. During 1971 he was working in New York State and lived with his wife and two sons in a house, owned by himself and his wife, in Champlain, New York.

3. During 1971 petitioner applied for a transfer to the national office of the Customs Service. The transfer was approved and became effective on August 22, 1971. Petitioner testified this was a permanent transfer.

4. Petitioner moved to the Washington, D.C. area in late August, and, after living at several locations during his first three weeks in the new location, he moved into a rented apartment in McLean, Virginia. His family remained in New York.

5. Petitioner's family planned on moving to his new location when a suitable house in that area was found. The family planned on traveling to Washington in November 1971 for this purpose.

6. Petitioner's expectation was to work in the national office for only four or five years and then transfer to a Customs Service port of entry.

7. Near the end of September 1971, petitioner was notified that he was to be transferred to Laos. He arrived in Laos on November 11, 1971. His family remained in their New York house.

8. Petitioner's family left New York and joined him in Laos in May 1972. They lived in a house provided and paid for by his employer.

9. Petitioner intended to return to the Customs Service in Washington, D.C. with his family after the termination of his overseas assignment.

10. When petitioner's family left New York in May 1972, the family furniture and other possessions were put in storage in their New York house. The petitioner testified that the house was listed for sale with a real estate broker and the

house was rented to relatives. No proof was submitted concerning the listing of the house for sale, nor did the petitioner show any rental income or rental expenses on his Federal tax returns for 1972 and 1973.

11. Petitioner and his wife entered into a voluntary separation agreement on December 18, 1972. The agreement was drafted by petitioner. It called for petitioner to provide for the support of his children.

12. Petitioner's wife and children left Laos on January 3, 1973, and moved back into their New York home.

13. Petitioner was employed in Laos for the entire 1973 calendar year.

14. During 1973 petitioner visited his family in New York on two occasions, for a total of approximately twenty-five days.

15. Petitioner returned from Laos in March 1974, and was assigned to the national office in Washington, D.C.

16. Shortly after his return petitioner rented an apartment in Arlington, Virginia, signing a one-year lease on April 29, 1974.

17. Petitioner desired to be located near his children in New York and began to look for a position in the northern New York, Vermont area soon after he returned from Laos.

18. Petitioner obtained a transfer within the Customs Service to New York and moved to New York in September 1974.

19. Petitioner and his wife entered into another separation agreement in New York on January 3, 1975 and their divorce was finalized on October 6, 1975.

20. Petitioner deeded his one-half interest in the New York house to his two sons in 1975.

21. Petitioner filed a Virginia Nonresident Income Tax Return for 1972, allocating 13.36 percent of his income for that year to Virginia.

22. On their 1973 joint Federal income tax return, petitioners claimed itemized deductions of $4,181.28, which included a deduction for state and local income taxes of $43.80.

23. The petition filed in this matter indicated on its face, tax year 1973, however, on the back and in an attachment to the petition, petitioners indicated tax years 1972 and 1973 on the premise that a similar problem was encountered for 1972 and the petitioners claim that a full year's tax was paid for 1972.

24. No information concerning 1972 was submitted at the hearing and discussion concerning this year was very limited.

CONCLUSIONS OF LAW

A. That a domicile is the place which an individual intends to be his permanent home. 20 NYCRR §102.2(d)(1); Matter of Newcomb v. Dixon, 192 N.Y. 238, 250 (1908).

B. That a domicile one 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. 20 NYCRR §102.2(d)(2); Newcomb, supra at 250.

C. That the evidence establishing the required intention to effect a change in domicile must be clear and convincing. Matter of Bodfish v. Gallman, 50 A.D.2d 457, 458 (3rd Dept. 1976).

D. That petitioner did not effect a change of domicile from New York to Virginia in 1971. The apartment rented in McLean, Virginia when petitioner arrived at his new business location was a temporary home. His family was to travel to the area in November 1971 to look for a suitable home. Therefore, the McLean, Virginia apartment was never intended to be his fixed and permanent home.

E. That petitioner did not effect a change of domicile from New York to Laos in 1971 or 1972. The foreign assignment was to be temporary as petitioner intended to leave Laos after the termination of his overseas assignment.

F. That since petitioner never established a new domicile for 1973, he remained a domiciliary of New York for that year.

G. That a domiciliary of New York who maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in New York is a nonresident individual. All three of these requirements must be satisfied. Tax Law §605(a)(1); 20 NYCRR §102.2(b).

H. That petitioner did not maintain a permanent place of abode outside of New York during 1973. During 1973 he was living in Laos and testified that his stay in that country was a temporary assignment.

I. That petitioner was a resident individual of New York within the meaning and intent of section 605(a)(1) of the Tax Law in 1973, and, therefore, is liable for New York personal income taxe on income from all sources.

J. That petitioners William and Nancy LeClair are entitled to a New York itemized deduction of $4,137.48 by virtue of Finding of Fact "22" supra and sections 613 and 615 of the Tax Law; that the Audit Division is directed to accordingly modify the Notice of Deficiency dated February 28, 1977.

K. That in view of Findings of Fact "23" and "24" supra, the scope of this decision is confined to 1973.

L. That the petition of William and Nancy LeClair is granted to the extent of Conclusion of Law "J" and is in all other respects denied. The

Notice of Deficiency issued February 28, 1977, as modified, is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

JUL 1 8 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER