

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Johanna Tattle Reiss :
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 1972. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Johanna Tattle Reiss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Johanna Tattle Reiss
St. Michel Colline
Chemin de la Californie
062200 Cannes, FRANCE

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.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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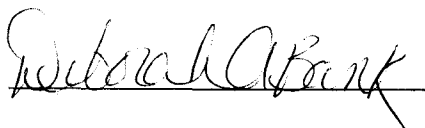
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of November, 1980, he served the within notice of Decision by certified mail upon Arthur Kalish the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

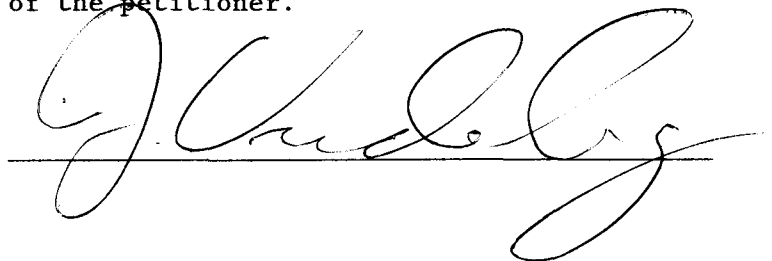
Mr. Arthur Kalish
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Ave.
New York, NY 10022

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
28th day of November, 1980.





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

November 28, 1980

Johanna Tattle Reiss
St. Michel Colline
Chemin de la Californie
062200 Cannes, FRANCE

Dear Ms. Reiss:

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
Arthur Kalish
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOHANNA TATLE REISS
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

DECISION

Petitioner, Johanna Tatile Reiss, residing at St. Michel Colline, Chemin de la Californie, 062200 Cannes, France, 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 1972 (File No. 18056).

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 9:15 A.M. Petitioner appeared by Paul Weiss, Rifkind, Wharton & Garrison (Arthur Kalish and Richard Bronstein, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner changed her domicile from New York to France on or about April 7, 1972, and thus became a nonresident individual of New York for personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, Johanna Tatile Reiss, filed a New York State Income Tax Resident Return for 1972, stating thereon that she was a resident of New York from January 1, 1972 to April 7, 1972.

2. On January 27, 1976, petitioner signed a consent extending the period of limitations for 1972 until April 15, 1977 in accordance with section 685(c)(2) of the Tax Law. On December 20, 1976, the Audit Division issued a Notice of Deficiency against petitioner imposing a deficiency in personal income tax of \$107,254.27 for 1972 and applied against said deficiency a refund of personal income tax of \$595.40 for the year 1973. The deficiency was attributable mainly to a net long-term capital gain of \$915,543.38 on stock sold after April 7, 1972.

3. Petitioner, Johanna Tattle Reiss, was concededly a domiciliary of New York State through April 7, 1972.

4. Petitioner and her husband gave up their New York rental apartment on April 7, 1972. The lease (which was in her husband's name) expired at approximately the same time. All of the furniture from this apartment was disposed of within the United States on or before April 7, 1972.

5. In July of 1971, petitioner purchased a condominium apartment in Cannes, France, for \$150,000. The apartment was not ready for petitioner's occupancy until March of 1972. Petitioner intended this condominium to be her permanent retirement home.

6. Petitioner purchased more than \$150,000 worth of furnishings for her Cannes condominium, which were installed in time for petitioner's April 1972 occupancy.

7. Petitioner and her husband moved to their condominium apartment in Cannes, France, on April 7, 1972. Since that date, her condominium has been the only residence petitioner and her husband have maintained. They have continuously regarded this apartment as their permanent home. Since the 1972 move, petitioner has returned to New York State on three occasions, never spending more than 30 days in New York State in any year.

8. Petitioner closed all of her charge accounts with New York department stores on or about August 3, 1972.

9. Petitioner gave up her New York telephone listing at the time of her April 1972 departure.

10. Petitioner leased an automobile in the State of New York prior to April 7, 1972, which automobile was returned to its lessor on or about her April 7, 1972 departure.

11. Petitioner and her husband each obtained from the French government for their April 1972 entry into France, a Carte de Sejour Residence Ordinaire permitting them to remain in France indefinitely.

12. Petitioner and her husband purchased an automobile in France in November of 1972, paying on the purchase price a tax of 33%, a tax not due when one expresses an intent to remain in France less than six months.

13. Petitioner and husband have continued to be United States citizens throughout the period herein involved, and have neither renounced that citizenship nor attempted to acquire French citizenship.

14. Petitioner has not voted in any election in the United States since moving to France, although she had voted regularly prior to so moving.

15. Petitioner's only mailing address since April 7, 1972 has been that of her Cannes condominium.

16. In 1969 petitioner retired from her position as president of Grand Circle Travel, Inc., located in New York City. In the severance agreement, petitioner agreed not to compete with Grand Circle Travel, Inc. during the next five years and to make herself available as a consultant should the need arise. Grand Circle Travel, Inc. agreed to pay her a lump-sum of \$15,000 at the beginning of each year. The need for her consulting services never arose.

17. Petitioner's only property remaining in the United States after her April 1972 departure for France was in New York, namely, stored furniture

valued at \$700, from a previous marriage and an investment securities custodial account for the management of her funds and for the transmittal of funds to her order in France.

18. Petitioner executed a will in 1972 in anticipation of moving to France, and in 1975 upon the death of her father, including in each will, on the advice of her attorney, a provision that her will was to be probated in New York and under the laws of New York, in order to assure her that New York law, with effects known to her, would be applicable, and not French law, with which she was unfamiliar.

19. Findings of Fact "1" through "18" in the aggregate establish petitioner's intention in April of 1972 and throughout the period herein involved that her place of abode in Cannes, France, be her permanent home.

CONCLUSIONS OF LAW

A. That petitioner's established intention since April of 1972 that her place of abode be her permanent home establishes Cannes, France, as the place where petitioner intended to remain permanently, within the meaning of 20 NYCRR 102.2(d)(3).

B. That petitioner's intention to remain permanently in Cannes, France, establishes Cannes, France, as her domicile.

C. That petitioner had no permanent place of abode within New York State after April 7, 1972.

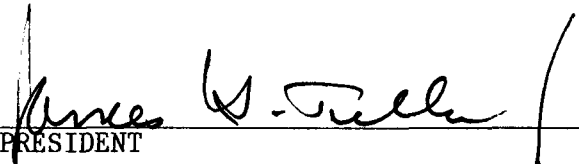
D. That as of April 7, 1972, petitioner ceased to be a resident individual within the meaning of section 605(a) of the Tax Law. Accordingly, the capital gain on intangible personal property (stock) sold during the nonresident period is not includible in petitioner's New York taxable income or her New York minimum taxable income.

E. That the petition of Johanna Tattle Reiss is granted and the Notice of Deficiency is cancelled. The Audit Division is directed to authorize a refund of the overpayment claimed by petitioner on her 1973 New York State income tax return.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 28 1980


PRESIDENT


COMMISSIONER


COMMISSIONER