

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Denison W. & Eleanore S. Schweppe :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Denison W. & Eleanore S. Schweppe, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Denison W. & Eleanore S. Schweppe
Hamburg Rd.
Old Lyme, CT 06371

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
7th day of July, 1980.

Eutrah A. Bark

J. J. Vredenburg

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

July 7, 1980

Denison W. & Eleanore S. Schweppe
Hamburg Rd.
Old Lyme, CT 06371

Dear Mr. & Mrs. Schweppe:

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
DENISON W. SCHWEPPE and ELEANORE S. SCHWEPPE
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, Denison W. Schweppe and Eleanore S. Schweppe, Hamburg Road, Old Lyme, Connecticut 06371, 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. 12378).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1978 at 9:30 A.M. Petitioner Denison W. Schweppe appeared pro se and for his wife, petitioner Eleanore S. Schweppe. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner Denison W. Schweppe was a domiciliary of New York State for the subject year, within the meaning of section 605(a)(1) of the Tax Law and the tax regulations thereunder (20 NYCRR 102(2)(b)).

FINDINGS OF FACT

1. Petitioners, Denison W. Schweppe and Eleanore S. Schweppe, his wife, timely filed a New York State Income Tax Nonresident Return for 1973. On said return, petitioners indicated their residency as Hamburg Road, Old Lyme, Connecticut.

2. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes and Notice of Deficiency against petitioners, imposing additional tax of \$4,235.78, less an overpayment of \$48.45, plus interest.

3. Petitioner Denison W. Schweppe was a management consultant for Case & Company during the subject year. His work required that he travel to various states to visit clients' places of business. The home office where he usually worked was located in Connecticut. He has an abode in Old Lyme, Connecticut, where in 1973 he voted, held a driver's license and had his automobile registered, and which he now claims as his permanent residence during that year for income tax purposes.

4. Admittedly, petitioner Eleanore S. Schweppe, petitioner Denison W. Schweppe's legal spouse during 1973, maintained her own residence in that year in New York City, at an 80 East End Avenue apartment, and she worked and lived in New York City at that abode for her convenience and for business purposes. The lease to said apartment had always been in the names of both petitioners since 1962. Both petitioners contributed to the rental and maintenance payments and the telephone there was listed in the name of Denison W. Schweppe. He testified that on occasion, when his work required that he go to or through New York City enroute elsewhere, he would stay with his wife at her apartment. However, petitioner Denison Schweppe could not substantiate by documentary evidence the number of days encompassing these stays in New York, or whether it was 183 days or less for 1973, the year in question. Neither was there any evidence to show that the maintenance of a separate abode for his wife was the result of marital difficulties. Rather it was admittedly for the wife's convenience, as herein indicated.

5. In a decision by the New York State Tax Commission dated May 3, 1978, and involving these same parties for 1970, 1971 and 1972 (wherein almost the identical facts and circumstances existed as were shown herein for 1973), the Commission held that Denison W. Schweppe was and continued to be a domiciliary of New York State, within the meaning of section 605(a)(1) of the Tax Law.

CONCLUSIONS OF LAW

A. That petitioners, Denison W. Schweppe and Eleanore S. Schweppe, were domiciliaries of New York State during 1973 within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(d).

B. That during the year at issue, section 605 of the Tax Law provided in part as follows:

"(a) Resident individual. A resident individual means an individual:

(1) who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in the armed forces of the United States during an induction period.

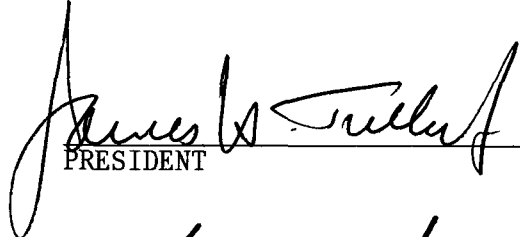
(b) Nonresident individual. A nonresident individual means an individual who is not a resident."

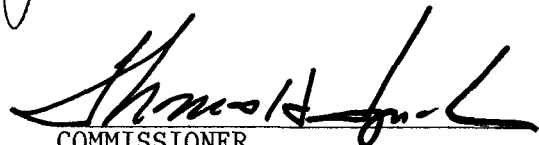
C. That petitioners have not sustained the burden of proof imposed by section 689(e) of the Tax Law to show that they met the statutory requirements for taxation as nonresident individuals. Accordingly, they are deemed to have been resident individuals of New York State during 1973 and are taxable as such.

D. That the petition of Denison W. Schweppe and Eleanore S. Schweppe is denied and the Notice of Deficiency issued April 11, 1975 is sustained.

DATED: Albany, New York
JUL 07 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER