

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ralph M. & Wilma E. Starke :

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 1971. :

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 6th day of August, 1980, he served the within notice of Decision by certified mail upon Ralph M. & Wilma E. Starke, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

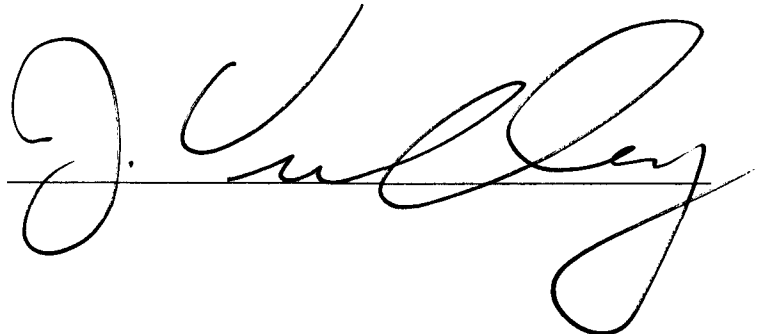
Ralph M. & Wilma E. Starke  
73 Holland Park  
London, W. 11, ENGLAND

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  
6th day of August, 1980.

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STATE OF NEW YORK  
STATE TAX COMMISSION

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for the Year 1971. :

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 6th day of August, 1980, he served the within notice of Decision by certified mail upon Thomas P. Donnelly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

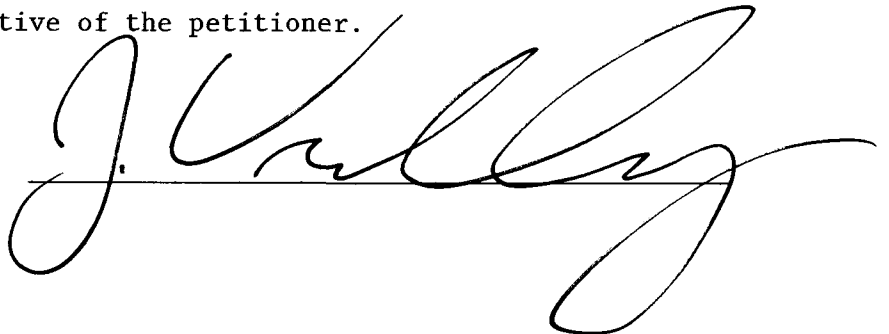
Mr. Thomas P. Donnelly  
Harris, Kerr, Forster & Company  
420 Lexington Ave.  
New York, NY 10017

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  
6th day of August, 1980.

Richard A. Brink



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

August 6, 1980

Ralph M. & Wilma E. Starke  
73 Holland Park  
London, W. 11, ENGLAND

Dear Mr. & Mrs. Starke:

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  
Thomas P. Donnelly  
Harris, Kerr, Forster & Company  
420 Lexington Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RALPH M. and WILMA E. STARKE : DECISION  
for a Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1971.

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Petitioners, Ralph M. and Wilma E. Starke, 73 Holland Park, London, W. 11, England, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 12416).

A formal hearing was held before George F. Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1977 at 1:15 P.M. Petitioners appeared by Harris, Kerr, Forster & Company (Thomas P. Donnelly, CPA). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioners abandoned their New York domicile during 1971 or remained New York domiciliaries for income tax purposes.

FINDINGS OF FACT

1. Petitioners, Ralph M. and Wilma E. Starke, timely filed New York State resident and nonresident income tax returns for 1971. On said returns, petitioners listed their address as 73 Holland Park, London, W. 11, England, and indicated their period of New York residence to be from January 1, 1971 to July 31, 1971.

2. On July 28, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, asserting additional income tax of \$2,764.05, plus interest of \$352.41 and less an overpayment claimed of \$976.35, for a total of \$2,140.11. The Notice of Deficiency was issued on the grounds that petitioners' domicile did not change for the year at issue; therefore, they were taxable as residents on their total income from all sources to the extent such income was reportable for Federal income tax purposes.

3. The petitioners formerly resided at their one family home at 245 Milton Road, Rye, New York.

4. Petitioner Ralph M. Starke obtained a temporary work permit, dated May 25, 1971, which permitted him to remain in England for one year.

5. Petitioner Ralph M. Starke accepted the position of hotel manager of Arcadia Motor Hotel, and on July 31, 1971, he moved himself and his family to London, England to take up his new employment.

6. Petitioner Ralph M. Starke had an international driver's license. He is a registered voter with the United States Embassy. He leased an apartment in London for five years, and he has since renewed that lease for a longer period. Petitioners were living in the same apartment at the time of the formal hearing.

7. Petitioners have not attempted to sell their New York home. In lieu thereof, the petitioners employed a real estate firm to manage and lease said premises.

8. Petitioner Ralph M. Starke contended that there was no agreement between himself and his employer and that the work assignment was for an indefinite duration.

CONCLUSIONS OF LAW

A. That a domicile once established continues until the person in question moves to a new location with the intention of making his fixed and permanent home there [20 NYCRR 102.2(d)(2)]. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile [Matter of Klein v. State Tax Commission, 55 A.D.2d 982, aff'd. 43 N.Y.2d 812; Matter of Newcomb, 192 N.Y. 238, 250].

B. That petitioners have failed to present clear and convincing evidence showing an intent to change their domicile [Matter of Bodfish v. Gallman, 50 A.D.2d 457. See also Matter of Babbin v. State Tax Commission, 67 A.D.2d 762].

C. That petitioners were residents of New York State during 1971 within the meaning and intent of section 605(a)(1) of the Tax Law, and that they were domiciled in and spent more than thirty days in New York State during the year in issue.

D. That the petition of Ralph M. and Wilma E. Starke is denied and the Notice of Deficiency issued July 28, 1975 is sustained.

DATED: Albany, New York

AUG 06 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER