

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Maxine Usdan :

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 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Maxine Usdan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maxine Usdan  
4471 Luxenberg Ct.  
Lake Worth, FL 33460

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  
3rd day of October, 1980.

Richard B. Bank

Jay Vredenburg

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

October 3, 1980

Maxine Usdan  
4471 Luxenberg Ct.  
Lake Worth, FL 33460

Dear Ms. Usdan:

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

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In the Matter of the Petition	:	
of	:	
MAXINE USDAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioner, Maxine Usdan, 4471 Luxenberg Court, Lake Worth, Florida 33460, filed a petition for redetermination of a determination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 16883).

On March 18, 1980, petitioner informed the State Tax Commission in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether petitioner was a resident of New York State during all, or part, of the year 1974.

FINDINGS OF FACT

1. Petitioner, Maxine Usdan, timely filed a New York State Income Tax Nonresident Return for the year 1974, on which she reported that of \$33,538.00 in adjusted gross income, none was taxable for New York State personal income tax purposes.

2. On June 17, 1975, and again on September 15, 1975, the Audit Division sent letters to petitioner requesting information relating to her residency

status during the year 1974. Upon her failure to reply to these letters, the Audit Division issued a Notice of Deficiency on July 26, 1976 in the sum of \$2,819.77, along with an explanatory Statement of Audit Changes. The deficiency held that the \$33,528.00 in adjusted gross income was subject to the personal income tax under Article 22 of the Tax Law.

3. Prior to the year 1974, petitioner was a resident of New York State and frequently visited a home owned by her father in Florida. Petitioner submitted a notarized statement, on which she contended that in August, 1974 she decided to become a resident of Florida. Also, in August, 1974, petitioner started to attend college in Florida. Petitioner did not submit, and the record did not contain, any evidence supporting her notarized statement, or her contentions.

CONCLUSIONS OF LAW

A. That petitioner, Maxine Usdan, has failed to sustain the burden of proof required by section 689(e) of the Tax Law establishing that she effectuated a change of domicile from New York State to Florida, during any part of 1974.

B. That petitioner, Maxine Usdan, was a resident of the State of New York during the entire year 1974, in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That the petition of Maxine Usdan is denied and the Notice of Deficiency issued July 26, 1976 for the year 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER