

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Robert D. and June D. Wall :

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 Years 1969, 1970. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Robert D. and June D. Wall, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert D. and June D. Wall  
16 Pembroke Dr.  
Endicott, NY 13760

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  
20th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Robert D. and June D. Wall :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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for the Years 1969,1970. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Charles R. Putrino 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. Charles R. Putrino  
50 Ave. B  
Endwell, NY 13760

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  
20th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

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

June 20, 1980

Robert D. and June D. Wall  
16 Pembroke Dr.  
Endicott, NY 13760

Dear Mr. & Mrs. Wall:

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  
Charles R. Putrino  
50 Ave. B  
Endwell, NY 13760  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT D. WALL and JUNE D. WALL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

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Petitioners, Robert D. Wall and June D. Wall, 16 Pembroke Drive, Endicott, New York 13760, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 01542).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on September 12, 1979 at 9:15 A.M. Petitioner, Robert D. Wall, appeared with Charles R. Putrino, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioners, Robert D. Wall and June D. Wall, changed their domicile and residence from New York State to St. Louis, Missouri during the period February 25, 1969 to June 25, 1970.

II. Whether petitioners properly claimed contributions on their 1970 New York State personal income tax return.

FINDINGS OF FACT

1. Petitioners, Robert D. Wall and June D. Wall, timely filed a New York State Income Tax Resident Return for 1969, on which they claimed to be residents of New York State during the period January 1, 1969 through February 24, 1969. On said return, they excluded income and deductions earned or expended during the period they resided in Missouri.

2. Petitioners timely filed a New York State Income Tax Resident Return for 1970, on which they claimed to be residents of New York State during the period June 25, 1970 through December 31, 1970. On said return, they again excluded income and deductions earned or expended during the period they resided in Missouri.

3. On February 26, 1973, the Income Tax Bureau issued two notices of deficiency. One notice was for 1969, asserting additional personal income tax of \$1,929.90, plus interest of \$331.56, for a sum of \$2,261.46. The other notice was for 1970, imposing personal income tax of \$2,227.46, plus interest of \$249.03, for a total of \$2,476.49. In each of the notices of deficiency, the Income Tax Bureau contended that the petitioners were domiciled in New York State and, therefore, taxable as residents on all income wherever earned. In the Notice issued for 1970, an adjustment was made to contributions.

4. Prior to February, 1969, petitioners were domiciliaries of New York State. In February of 1969, petitioner Robert D. Wall was transferred by his employer, International Business Machines Corporation (hereinafter "IBM") to an on-site location at McDonnell Douglas Corporation in St. Louis, Missouri. Petitioner Robert D. Wall was considered to be on "duty status" which by policy IBM defines as follows:

"an employee is in duty status when he has no permanent work location because his job requires continuous duty station reassignments for indefinite periods".

In Mr. Wall's case, IBM chose "duty status" because of the likelihood the petitioner was going to be transferred to Texas after the St. Louis assignment. There was also the possibility that petitioner might choose to become IBM's resident engineering manager in St. Louis for an extended period of time with a transfer thereafter to an undefined location.

5. Petitioners contended their intent to become residents of the State of Missouri was manifested by enrolling their children in St. Louis schools, effecting changes in insurance policies, acquiring licenses and registrations for operation of vehicles in the State of Missouri and paying Missouri State taxes as bona fide residents of the State of Missouri.

6. Petitioners sold their house in Vestal, New York on February 15, 1969 and moved their belongings to an apartment in St. Louis. While in St. Louis, they looked at available real estate, but found none to their liking. During November, 1969, the petitioners knew that the assignment in St. Louis would soon end. During February, 1970, they began building a house on property they purchased in Owego, New York during January, 1969.

7. Petitioners returned to New York on June 25, 1970.

8. Petitioners submitted a copy of their 1969 Missouri individual income tax return which showed they paid \$448.31 in Missouri State tax from the wages which Mr. Wall earned there. They were also given the opportunity to present their 1970 Missouri tax return; however, they did not do so.

9. Petitioners introduced some receipts for the claimed contributions for 1970. The total of these receipts was not greater than the amount allowed by the Income Tax Bureau.

CONCLUSIONS OF LAW

A. That a domicile, once 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)], even though such person may, at some future time, seek a home elsewhere (McCarthy v. McCarthy, 39 N.Y.S.2d 922). No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home [20 NYCRR 102.2(d)(2)]. The question of what place shall be considered the domicile of a party is one of fact rather than of law (Pignatelli v. Pignatelli, 8 N.Y.S.2d 10). Evidence to establish required intention to effect a change in domicile must be clear and convincing. That petitioners have failed to establish by a preponderance of evidence that they changed their domicile from New York State to Missouri.

B. That petitioners, Robert D. Wall and June D. Wall, were domiciliaries of New York State during 1969 and 1970, having at no time effected a change of domicile to the State of Missouri.

C. That petitioners spent more than 30 days in New York during each of the years 1969 and 1970, and did not maintain a permanent place of abode outside New York State for each of the entire years at issue; therefore, they were resident individuals in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

D. That petitioners have failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law in establishing that they were entitled to a greater amount in contributions in 1970 than allowed by the Income Tax Bureau.

E. That petitioners are entitled to a resident tax credit of \$448.31 for 1969 in accordance with section 620 of the Tax Law. The Audit Division is directed to modify the Notice of Deficiency for 1969, issued on February 26, 1973, by the amount of said allowable resident tax credit.

F. That the petition of Robert D. Wall and June D. Wall is granted to the extent indicated in Conclusion of Law "E", and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER