

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
James R. & Kathleen M. Wallis :

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 1973. :

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 June, 1980, he served the within notice of Decision by certified mail upon James R. & Kathleen M. Wallis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James R. & Kathleen M. Wallis
Rick Lane
Peekskill, NY 10566
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 June, 1980.

Jeanne Knapp

J. Vredenburg

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

June 6, 1980

James R. & Kathleen M. Wallis
Rick Lane
Peekskill, NY 10566

Dear Mr. & Mrs. Wallis:

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	:	
	:	
JAMES R. WALLIS and KATHLEEN M. WALLIS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioners, James R. Wallis and Kathleen M. Wallis, Rick Lane, Peekskill, New York 10566, 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. 16722).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 26, 1979 at 1:15 P.M. Petitioner James R. Wallis appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in and residents of the State of New York during the entire taxable year 1973.

FINDINGS OF FACT

1. Petitioners, James R. Wallis and Kathleen M. Wallis, filed a joint New York State Income Tax Resident Return for the year 1973 whereon they reported their period of New York residence as being from January 1, to July 18, 1973. Consistent with said filing, petitioners subtracted from total income, that part of such income which was derived from out of State sources during their purported period of nonresidence.

2. Petitioners attached to their return a copy of Federal Form 2350, Application for Extension of Time For Filing U.S. Income Tax Return (for U.S. citizens abroad who expect to qualify for exempt earned income). Said application indicated that petitioners qualified for exemption based on physical presence in a foreign country or countries for 510 full days of an 18 consecutive-month period. The Director of International Operations Internal Revenue Service granted petitioners' request for an extension of time until January 30, 1975.

3. On December 3, 1975, the Income Tax Bureau issued a Statement of Audit Changes to petitioners wherein it held that they were residents of New York State during the entire taxable year at issue. Accordingly, on July 26, 1976, the Audit Division issued a Notice of Deficiency against petitioners for 1973, asserting additional personal income tax of \$2,508.85, plus interest of \$428.91, for a total due of \$2,937.76. Petitioners timely filed a petition in which they stated that they "...were domiciled outside New York State and remained non-domiciliaries of the State for at least nineteen months subsequent thereto".

4. Petitioners contended that they changed their residence from New York State to Italy on July 18, 1973, and that at such time their intent was not to return.

5. Petitioners initially established New York State as their domicile and residence during taxable year 1967. At this time petitioner James R. Wallis commenced employment as a research scientist with International Business Machines Co. (IBM) in Yorktown Heights, New York.

6. During 1973, IBM Italy, which was involved in establishing a scientific center aimed at bringing modern hydrologic technology to third world nations, requested petitioner James R. Wallis's assistance. Upon accepting a position connected with this project, the duration of which was expected to be from

five to ten years, petitioner sold his New York home and moved to Italy with his wife and two children.

7. Petitioner James R. Wallis had no visa on entering Italy, but he applied for a work permit which he subsequently obtained.

8. On entering Italy, petitioners secured an apartment under a one-year renewable lease and enrolled their two young children in Italian schools.

9. While in Italy, petitioners maintained bank accounts in both Italy and New York.

10. Petitioner James R. Wallis's compensation remained unchanged at the time of his transfer to Italy. He was paid through IBM in New York, who in turn received reimbursement from IBM Italy. He contended that in addition to paying taxes to Italy, New York State income tax was withheld from his compensation in spite of his continuous objections.

11. Petitioners maintained New York State registration of their automobile while in Italy. They contended that although they attempted to secure Italian registration, they were prohibited from doing so by the Italian authorities.

12. Petitioners made no attempts to either relinquish their United States citizenship or to obtain Italian citizenship.

13. During 1973, petitioner James R. Wallis returned to New York State for two days, for the purpose of appearing in an IBM television commercial.

14. As the result of the failure of the IBM project in Italy, petitioner James R. Wallis returned to New York State in February, 1975 and resumed his duties with IBM in New York.

15. Petitioner Kathleen M. Wallis, who is presently divorced from petitioner James R. Wallis, remained in Italy with their children for an undisclosed period of time subsequent to her husband's return to New York. Eventually they returned to the United States and moved to California.

16. An historical analysis of petitioner James R. Wallis's geographical movements revealed the following:

- a - That he was born a Canadian citizen in Montreal, Canada.
- b - That he lived in England for an undisclosed length of time where he attended grade school, high school and secured his first employment.
- c - That he subsequently moved to Canada, where he resided and was employed in various cities.
- d - That he subsequently moved to the United States, where he resided and was employed in various states.
- e - That he obtained United States citizenship at some point prior to initially establishing New York residence, and
- f - That since his return to New York from Italy in February, 1975, he has continuously maintained a New York domicile and residence.

CONCLUSIONS OF LAW

A. That a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return (20 NYCRR 102.2(d)(3)).

Further, in determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct (20 NYCRR 102.2(d)(2)).

The presumption against a foreign domicile is stronger than the general presumption against a change of domicile. "Less evidence is required to establish a change of domicile from one state to another than from one

nation to another" (Matter of Newcomb, 192 N.Y. 238, 250, 84 N.E. 954).

In the instant case, petitioner James R. Wallis's return to New York upon the failure of the Italian scientific project, and his simultaneous resumption of employment with IBM in New York, leads to the strong inference that the prime factor determinative of the length of his stay in Italy, was the duration of the IBM project he was assigned to. Accordingly, petitioners did not change their New York domicile, but rather remained New York domiciliaries through the close of the taxable year at issue.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

Since the petitioners herein did not satisfy these requirements, they are deemed to have been residents of New York State for the entire taxable year 1973.

C. That petitioners, in arriving at New York adjusted gross income, are allowed to exclude amounts constituting earned income as defined in section 911(b) of the Internal Revenue Code; that the amount excludable by petitioners in 1973 is computed on the basis of the following formula:

$$\frac{\text{Number of days in that part of the taxable year} \\ \text{falling within the 18-month period}}{\text{Number of days in the taxable year}} \times \$20,000 \text{ (Maximum amount} \\ \text{for an entire taxable} \\ \text{year under section} \\ \text{911(b)(2))}$$

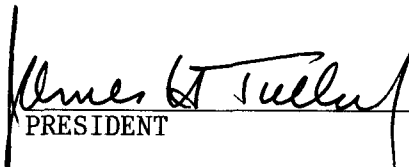
D. That the petition of James R. Wallis and Kathleen M. Wallis is granted

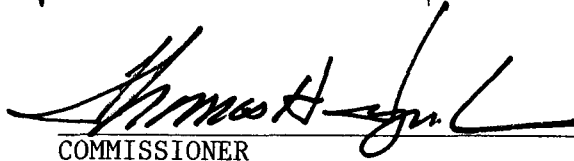
to the extent shown in Conclusion of Law "C" supra; and that, except as so granted, the petition is in all other respects denied.

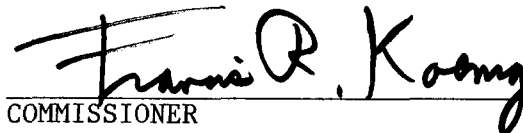
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980


PRESIDENT


COMMISSIONER


COMMISSIONER