

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Andrea C. Wei :

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 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 6th day of June, 1980, he served the within notice of Decision by certified mail upon Andrea C. Wei, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Andrea C. Wei  
360 E. 72nd St.  
New York, NY 10021

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.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

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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 David J. Mandelbau 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. David J. Mandelbau  
450 Seventh Ave.  
New York, NY 10001

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 June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Andrea C. Wei  
360 E. 72nd St.  
New York, NY 10021

Dear Ms. Wei:

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  
David J. Mandelbau  
450 Seventh Ave.  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ANDREA C. WEI	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

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Petitioner, Andrea C. Wei, 360 East 72nd Street, New York, New York 10021, 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 1970 (File No. 13832).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 at 2:45 P.M. Petitioner appeared by David J. Mandelbaum, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the domicile of the petitioner (a minor) follows that of the parent who has custody of her.

II. Whether petitioner was a resident of New York State during the year 1970.

FINDINGS OF FACT

1. Petitioner, Andrea C. Wei, filed a timely New York State Income Tax Nonresident Return for 1970. On said return, petitioner reported \$39,116.00 in Federal income and no New York income.

2. On October 31, 1972 the Income Tax Bureau issued a Statement of Audit Changes against the petitioner imposing \$3,796.24 in personal income tax plus

\$499.74 in interest for a total of \$4,295.58. Said statement was issued on the grounds that temporary absence from New York State does not effect a change of residence status of a domiciliary of New York State. Accordingly, on June 25, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner. The petitioner timely filed a petition for redetermination of said deficiency.

3. Petitioner, Andrea C. Wei, was born on April 16, 1952. During the tax year 1970, she was a minor.

4. Petitioner's parents lived in a house in Scarsdale, New York. In 1968, petitioner's mother, Mrs. Wei, moved to Taiwan.

In a written statement read into the record by the representative, Mrs. Wei gave these reasons for moving to Taiwan in 1968:

"I went to Taipei in Taiwan in the middle of 1968. My marriage was ending and my husband suggested that I come to Taiwan to oversee his business interest there. Unfortunately, the business prospect did not proceed.

"In February, 1969 my former husband and I were divorced. I made Taipei my home with many more of my close relatives near me than in New York and with my children spending summer vacations from high school and college with me in Taiwan.

"Each year I visited them while they were in school as full-time students to be sure they were all right.

"After my divorce, I took an apartment as my residence and was employed as instructor in a liberal arts college in Taiwan. I became active in a private club devoted to Chinese musical arts, which is a major entertainment and pastime in Taiwan."

In 1969, Mrs. Wei obtained a Taiwanese resident visa. She used funds received from her divorce settlement to purchase an apartment in Taiwan.

5. Pursuant to a Mexican divorce decree granted in 1969, Mrs. Wei was given sole care and custody of petitioner. Petitioner visited her mother in Taiwan during the summers of 1968 and 1969, but not in 1970.

6. In 1970, petitioner was a student at Tufts University in Medford,

Massachusetts. During the spring vacation of that year she visited her father, who lived in an apartment in New York City. During the summer of 1970 she remained in Massachusetts and spent time on Cape Cod. During her 1970 Christmas vacation she was in Vermont for two weeks and spent one week in New York City with her father. She spent less than 30 days in New York State during 1970.

7. As part of the property settlement arising from her divorce, the Scarsdale house was deeded to Mrs. Wei. Prior to the house being deeded to her, the house had been rented to a third party by Mr. Wei under a two-year lease, with an option to renew. At the termination of the lease in March, 1973, the Scarsdale house was vacated and Mrs. Wei had a friend attempt to sell the house. When this proved unsuccessful, she turned the house over to a broker who sold it in 1974.

#### CONCLUSIONS OF LAW

A. That when parents are separated by a judicial decree or divorce, the minor's domicile follows that of the parent to whom custody has been awarded. Mallina v. Mallina, 167 Misc. 343, 4 N.Y.S.2d 27 (1938). Therefore, petitioner's domicile follows the domicile of her mother.

B. That petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to establish that her mother changed domicile from New York State to Taiwan. Petitioner's mother, however, did maintain a permanent place of abode outside of New York State in 1970 and said abode is deemed to have constituted the permanent place of abode of petitioner, Andrea C. Wei.

C. That petitioner had a permanent place of abode outside New York State, had no permanent place of abode in the state and spent less than thirty days in the state in the year at issue. Therefore, petitioner, although

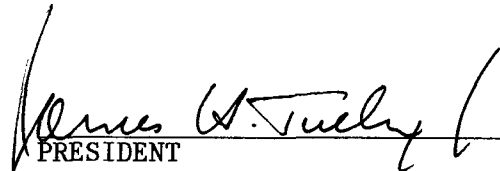
domiciled in this state, is considered a nonresident of the state under section 605(a)(1) of the Tax Law.

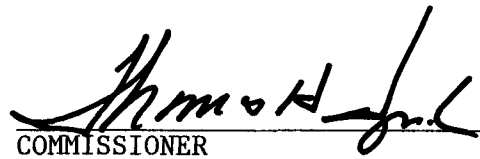
D. That the petition of Andrea C. Wei is granted and the Notice of Deficiency issued July 25, 1973 is cancelled.

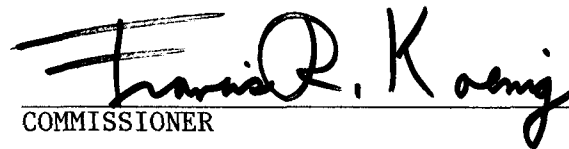
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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State of New York  
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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 18th day of July, 1980, he served the within notice of Decision by certified mail upon David J. Mandelbaum 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. David J. Mandelbaum  
Mandelbaum & Garey  
270 Madison Ave.  
New York, NY 10016

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  
18th day of July, 1980.

Dorothy A. Bank

J. Vredenburg