

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Daniel H. III & June M. Young :

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 1969. :

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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Daniel H. III & June M. Young, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel H. III & June M. Young
617 S.W. 21st Circle
Boynton Beach, FL 33435

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
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 2, 1980

Daniel H. III & June M. Young
617 S.W. 21st Circle
Boynton Beach, FL 33435

Dear Mr. & Mrs. Young:

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	:	
	:	
DANIEL H. YOUNG III and JUNE M. YOUNG	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	

Petitioners, Daniel H. Young III and June M. Young, 617 S. W. 21st Circle, Boynton Beach, Florida 33435, 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 1969 (File No. 13480).

On January 30, 1979, petitioners, Daniel H. Young III and June M. Young, advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission based upon the entire record contained in the file.

ISSUE

Whether petitioners were domiciliaries of New York State during 1969.

FINDINGS OF FACT

1. Petitioners Daniel H. Young III and June M. Young filed a joint New York State Income Tax Nonresident Return for 1969 in which they indicated that their period of New York State residence was January 1, 1969 to June 12, 1969.

2. The Income Tax Bureau held that petitioners were domiciliaries of New York State for the entire year of 1969 and that they were taxable on all income received during said year. A Notice of Deficiency was issued on December 18, 1972, in the amount of \$1,031.91 in personal income tax, plus interest of \$96.58, less the overpayment shown on their return of \$430.15, for a sum of \$698.34.

3. Petitioner Daniel H. Young moved from Chicago to New York in November of 1968 to take advancement within the George J. Meyer Manufacturing Company (hereinafter Meyer Co.) as International Account Manager. In May 1969, the Meyer Co. requested that petitioner Daniel H. Young accept a position in Australia for a period of two years. The transfer to Australia in June of 1969 was for the purpose of managing a joint venture with Davleco PTY, Ltd. The Meyer Co. agreed to pay the costs incurred in breaking their lease in White Plains, New York, and the cost of moving and storing their personal household belongings while in Australia. The Meyer Co. also agreed to furnish petitioners with air fare to and from Australia, to allow a round trip, annually, to the United States in conjunction with their vacation and, while in Australia, to provide petitioners with a car for both business and personal use.

4. Due to differences with the Australian management over the method of operations, petitioner Daniel Young terminated his employment with Meyer Co. and returned to Chicago, Illinois on January 16, 1970.

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)]; this is so even though the person may, at some future time, seek a home elsewhere (McCarthy v. McCarthy, 39 NYS2d 922). The evidence to establish a required intention to effect a change in domicile must be clear and convincing. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile; that 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 NY 238; Matter of Bodfish v. Gallman, 50 AD2d 457).

B. That petitioners failed to establish by a preponderance of evidence

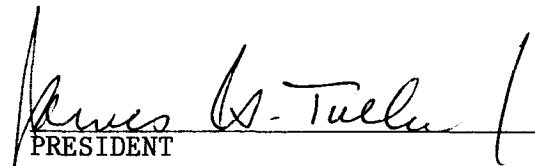
that they changed their domicile from New York State in 1969; that petitioners were domiciled in New York State and spent more than thirty days in said State during the year in question; therefore, they were residents of New York State during 1969, within the meaning and intent of section 605(a)(1) of the Tax Law.

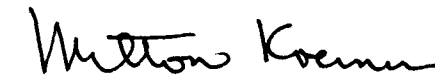
C. That the petition of Daniel H. Young III and June M. Young is denied and the Notice of Deficiency issued December 18, 1972 is sustained, together with such additional interest as may be lawfully owing.

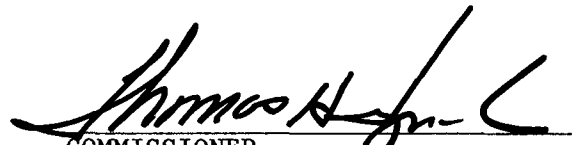
DATED: Albany, New York

STATE TAX COMMISSION

JAN 2 1980


PRESIDENT


COMMISSIONER


COMMISSIONER