

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Bank of New York, as Executor :
of the Estate of Duncan Graves, deceased : 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon The Bank of New York, as Executor of the Estate of Duncan Graves, deceased the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Bank of New York, as Executor
of the Estate of Duncan Graves, deceased
48 Wall St.
New York, NY 10005

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
19th day of June, 1981.

Connie D. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Bank of New York, as Executor :
of the Estate of Duncan Graves, deceased :
: 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Robert R. Sheehan 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. Robert R. Sheehan
Sheehan & Company
233 Broadway
New York, NY 10007

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
19th day of June, 1981.

Carmie Q. Hagelund.

J. Vredenburg

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

June 19, 1981

The Bank of New York, as Executor
of the Estate of Duncan Graves, deceased
48 Wall St.
New York, NY 10005

Gentlemen:

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
Robert R. Sheehan
Sheehan & Company
233 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE BANK OF NEW YORK, AS EXECUTOR	:	DECISION
OF THE ESTATE OF DUNCAN GRAVES, DECEASED :	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under :	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioner, The Bank of New York, as Executor of the Estate of Duncan Graves, 48 Wall Street, New York, New York 10005, 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. 17317).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1980 at 11:10 A.M. Petitioner appeared by George F. Sheehan & Company, P.C. (Robert R. Sheehan, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether decedent, Duncan Graves, was a domiciliary and resident of New York State for the year 1973.

FINDINGS OF FACT

1. On October 25, 1976, the Audit Division issued to Duncan Graves ("decedent") a Notice of Deficiency, asserting personal income taxes due for the year 1973 in the amount of \$21,126.80. The accompanying Statement of Audit Changes set forth the reason for the deficiency asserted, as follows:

"No basis has been shown for the change of residence during the 1973 tax year. All income reported is taxable."

2. Decedent filed a nonresident personal income tax return for 1973, on which he showed payments of estimated tax in the amount \$11,224.00 and computed a limitation percentage of zero; decedent therefore claimed a refund of \$11,224.00.

3. Decedent purchased a house with two hundred acres of property known as Breeze Hollow Farm in Washington Depot, Connecticut in 1936. In 1953, he purchased stock in a cooperative apartment building situated at 655 Park Avenue, New York, New York.

4. Decedent retired from business, approximately in 1961, and moved to Breeze Hollow Farm in 1970. His clothing and personal effects were thereafter kept at the farm.

5. Decedent's daughter lived in the cooperative apartment; all her expenses, including rent, groceries, telephone and utilities, were assumed by decedent. Decedent and his daughter considered that the furniture in the apartment was owned half by decedent, and half by her.

6. On January 11, 1972, decedent executed a last will and testament in which he declared his residence was New York, New York. By its terms, he bequeathed to his daughter the aforementioned cooperative apartment and all his furniture, pictures, silverware, china, glass, books and other tangible personal property located therein.

7. Following the retirement of decedent's accountant, decedent retained Mr. Sheehan, who noticed that decedent had been filing New York and Connecticut tax returns as though he was a resident of both states. Mr. Sheehan conferred with decedent and in the fall of 1974 advised decedent's attorneys that decedent had transferred his residence to Connecticut. The attorneys prepared

a codicil to the will, executed by decedent on October 7, 1974, which stated in relevant part:

"I hereby state that, since the execution of my said Will, I have changed my residence and domicile from the City of New York to Washington, Connecticut, where I own a house, cottage, farm and other buildings and the real estate on which they are situated. I have registered as a voter in said Town and now make my home, residence and domicile there. Accordingly, I hereby amend the statement appearing at the beginning of my said Will so that the same shall state that I am now a resident of the Town of Washington in the State of Connecticut."

8. In 1970, decedent spent 222 days at the Connecticut farm and 143 days at the cooperative apartment; in 1971, 322 days in Connecticut and 43 days in New York; in 1972, 360 in Connecticut, 6 in New York; and in 1973, 363 in Connecticut, 2 in New York. After 1973, he spent at a maximum one to two days in New York each year.

9. In 1973 and until his death, decedent registered his automobile in the state of Connecticut; he possessed a New York driver's license, with his Connecticut address thereon.

10. During the year at issue, the only organizations in which decedent held membership were the Lake Waramaug Country Club and the Washington Club, both in Connecticut.

11. Records maintained by the Board of Elections of the city of New York indicate that decedent voted in the presidential election of 1972; that he did not vote in 1970, 1971 nor 1973; that his address was 655 Park Avenue, New York; and that his registration was cancelled in December, 1974. On August 30, 1974, decedent registered to vote in Connecticut.

12. Duncan Graves died on April 13, 1977.

13. Appended to the motion made by decedent's attorneys at the Surrogate's Court of New York County for an order fixing estate taxes were various schedules,

including a schedule of funeral and administration expenses. Said schedule reflected payments made to, inter alia: Gristede Brothers; the New York Telephone Company; Mosler Safe Company, for opening the safe at the cooperative apartment; and Fine Home Cleaners, for cleaning service at the apartment.

CONCLUSIONS OF LAW

A. That a change in domicile requires an intent to give up the old and take up the new, coupled with acquisition of a residence in the new place; intent and actual residence in the new location must coincide. The test of intent with respect to the purported new domicile is "whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it." Matter of Bourne, 181 Misc. 238, 246, affd., 267 A.D. 876, affd., 293 N.Y. 785. "The evidence to establish the required intention to effect a change in domicile must be clear and convincing." Bodfish v. Gallman, 50 A.D.2d 457, 458.

B. That petitioner has failed to establish that decedent changed his domicile to Connecticut in 1973. In 1970 decedent moved to the farm he had purchased in 1936. However, in the will decedent executed in 1972, he stated his residence to be New York, New York. Furthermore, he retained his cooperative apartment in Manhattan, in which were located certain of his furniture, pictures, silverware, china, glass, books and other personal property, and to which he returned whenever he came to New York. These facts speak to his intent to keep the old residence.

C. That for purposes of Article 22 of the Tax Law, a resident individual is one who is domiciled in this state, unless:

"he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state..."
Section 605(a)(1)(A).

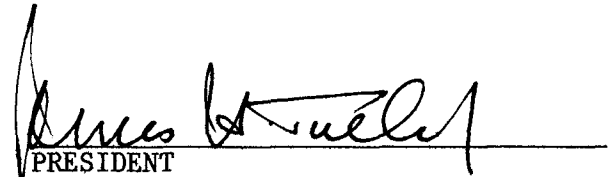
Decedent maintained a permanent place of abode in New York and was thus a resident of this state for personal income tax purposes in the year 1973.

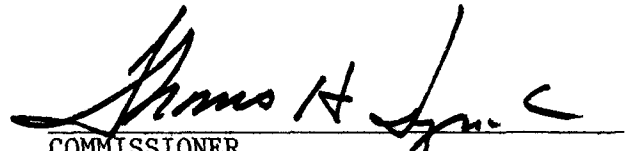
D. That the petition of The Bank of New York, as Executor of the Estate of Duncan Graves, is hereby denied, and the Notice of Deficiency issued October 25, 1976 is sustained in full.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981


PRESIDENT


COMMISSIONER


COMMISSIONER