

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Christopher F. Bednarek :  
and Madeline T. Bednarek :  
: 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 :  
1974.

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Christopher F. Bednarek and Madeline T. Bednarek the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Christopher F. Bednarek  
and Madeline T. Bednarek  
1937 Barton Hill Rd.  
Reston, VA 22091

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  
14th day of August, 1981.

*Janice A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Christopher F. Bednarek :  
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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Joseph Hodakowski the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Hodakowski  
P.O. Box 191  
Washington, NJ 07782

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  
14th day of August, 1981.

*Gunnice A. Hagellund*

*J. Vredenburg*

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

August 14, 1981

Christopher F. Bednarek  
and Madeline T. Bednarek  
1937 Barton Hill Rd.  
Reston, VA 22091

Dear Mr. & Mrs. Bednarek:

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  
Joseph Hodakowski  
P.O. Box 191  
Washington, NJ 07782  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
CHRISTOPHER F. BEDNAREK  
and  
MADELINE T. BEDNAREK  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1974.

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DECISION

Petitioners, Christopher F. Bednarek and Madeline T. Bednarek, 1937 Barton Hill Road, Reston, Virginia 22091, 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 1974 (File No. 20609).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1980 at 9:15 A.M. Petitioner Christopher F. Bednarek appeared with Joseph Hodakowski, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York State to New Jersey on July 28, 1974 or on November 20, 1974.

FINDINGS OF FACT

1. On September 2, 1975, the Income Tax Bureau received a 1974 New York State Income Tax Resident Return partially filled out with a notation, "please calculate tax based on residency". The tax return indicated that petitioners, Christopher F. Bednarek and Madeline T. Bednarek, resided in New York State from January 1, 1974 to November 29, 1974.

2. On October 31, 1977, the Audit Division issued a Notice of Deficiency for \$1,172.19, plus interest of \$253.59, along with an explanatory Statement of Audit Changes which indicated, in part;

"In accordance with your instructions, we have calculated your 1974 New York State tax based on the eleven (11) months you were a New York resident."

"Moving expenses are business expenses related to income earned as a nonresident and are, therefore, disallowed."

The disallowance of the moving expenses were not challenged by petitioners.

3. Petitioner Christopher F. Bednarek was a resident of, and employed in, the State of New York, when in June 1974 he was notified by his employer that he was awarded a promotion to District Sales Manager for the Springfield District in New Jersey. Company policy dictated that district managers reside within their district and, accordingly, petitioner Christopher F. Bednarek was required to relocate to New Jersey.

4. Petitioners put their New York home up for sale and started hunting for a new home in New Jersey. On July 4, 1974, petitioners, Christopher F. Bednarek and Madeline T. Bednarek, left a deposit on a home in New Jersey, which they subsequently forfeited upon their cancellation.

5. On July 16, 1974, petitioners signed a binder with a contractor to build a new home in New Jersey. On July 23, 1974, petitioners signed a contract for the construction of a new home.

6. On July 28, 1974, petitioner Christopher F. Bednarek began working in Springfield, New Jersey and resided at a nearby motel. Petitioner Madeline T. Bednarek and their children continued to stay at their New York home and were usually jointed by petitioner Christopher F. Bednarek during the weekends. They remained in New York for the sole purpose of selling their New York home.

7. On November 4, 1974, petitioners' New York home was sold and the entire family moved into the motel facilities occupied by petitioner Christopher F. Bednarek in New Jersey. On November 20, 1974, petitioner Christopher F. Bednarek and his family moved into their completed home in New Jersey.

8. Petitioner argued that the period of residency shown on their 1974 tax return was erroneously shown as January 1, 1974 to November 20, 1974 due to their new tax preparer who was unfamiliar with all the facts and the New York State Tax Law. They argued that he was unable to properly fill out a partial year tax return, and that he had improperly assumed that the day they moved into their New Jersey home, was the day they effectuated a change of domicile.

9. While petitioner Christopher F. Bednarek worked in New York, he earned \$10,629.17 and while working in New Jersey he earned \$17,154.20.

#### CONCLUSIONS OF LAW

A. That a domicile once established continues until a 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)). Accordingly, the essential factor in determining domicile is intent (Urguhart v. Urguhart 196 Misc. 664, 92 N.Y.S. 2d 484 aff'd without op 277 A.D. 752, 97 N.Y.S. 2d 200) and the determination of intent depends entirely on the facts (Cohen v. Cohen 129 N.Y.S. 2d 476).

B. That the fact that petitioner Christopher F. Bednarek accepted a promotion with a prerequisite to relocate to the State of New Jersey, coupled with the facts that he offered his New York home for sale and acquired a contractual obligation for the construction of a new permanent place of abode in New Jersey, clearly demonstrates that petitioner Christopher F. Bednarek had

the bona fide intention of making his fixed and permanent home in New Jersey upon his departure to said state on July 28, 1974. Accordingly, petitioner Christopher F. Bednarek changed his domicile from New York to New Jersey on July 28, 1974 in accordance with the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(d).

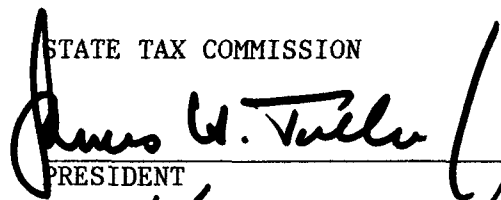
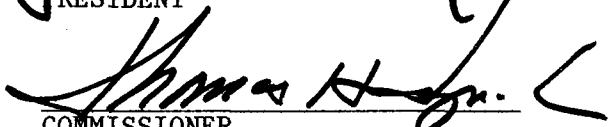
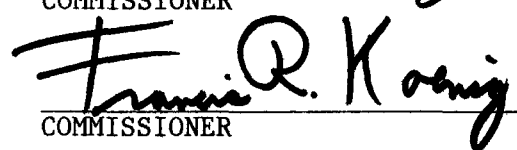
C. That although petitioner Madeline T. Bednarek remained in New York for the express purpose of selling their New York home, she also changed her domicile from New York to New Jersey on July 28, 1974, within the meaning and intent of 20 NYCRR 102.2(d)(5), which provides, in part, that "ordinarily a wife's domicile follows that of her husband".

D. That the petition of Christopher F. Bednarek and Madeline T. Bednarek is granted to the extent that the personal income tax liability under Article 22 of the Tax Law shall be recomputed based on the period of residency of January 1, 1974 to July 28, 1974.

E. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued October 31, 1977; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER