

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Donald J. & Ann G. Berryman :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Donald J. & Ann G. Berryman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald J. & Ann G. Berryman
576 Forest Lake Dr., RD 3
Andover, NJ 07821

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
20th day of February, 1981.

Cornie D. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

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Personal Income Tax :
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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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Richard H. Sugarman 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. Richard H. Sugarman
959 8th Ave.
New York, NY

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
20th day of February, 1981.

Cornelia A. Haglund

J. Vredenburg

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

February 20, 1981

Donald J. & Ann G. Berryman
576 Forest Lake Dr., RD 3
Andover, NJ 07821

Dear Mr. & Mrs. Berryman:

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
Richard H. Sugarman
959 8th Ave.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ESTATE OF DONALD J. BERRYMAN and ANN G. BERRYMAN: DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1973. :

Petitioner, Estate of Donald J. Berryman and Ann G. Berryman, 576 Forest Lake Drive, RD 3, Andover, New Jersey 07821, 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. 16297).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1980 at 2:45 P.M. Petitioners appeared by Richard H. Sugarman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners move to Hong Kong during 1973 terminated their status as New York State domiciliaries.

FINDINGS OF FACT

1. Petitioners, Donald J. Berryman, deceased, and Ann G. Berryman, filed a New York State Income Tax Resident Return for subject year. On said return, petitioner Donald J. Berryman, deceased, deducted on schedule C of the return, income earned while in Hong Kong consisting of wages, salaries, etc. of \$13,861.00; dividends of \$647.00 and interest of \$847.00.

2. On May 24, 1976 the Audit Division issued a Notice of Deficiency against the petitioners, imposing personal income tax of \$1,407.94, plus interest of \$222.47 for a total of \$1,630.41. The Notice was issued on the grounds that petitioners move to Hong Kong was temporary, and therefore, did not constitute a change in their status as New York domiciliaries. Accordingly, all income earned by petitioners while in Hong Kong was deemed subject to New York State personal income tax.

3. Petitioner Donald J. Berryman, deceased, obtained employment with Cooper Laboratories, Inc., ("Corporation"), in the early part of 1973. The oral agreement between the company and the petitioner provided, inter alia, that after petitioner completed his training at the Corporation's New Jersey office, that petitioner would then be assigned to its Hong Kong office as a comptroller. Upon completion of his training, the petitioner then left for Hong Kong on April 15, 1973. The petitioner traveled extensively in the Far East, auditing and verifying records of the Corporation's various subsidiaries.

4. Petitioner Ann G. Berryman, remained in New York until June, 1973 to permit petitioners' children to finish their school year.

Thereafter, the petitioners sold their New York home and furnishings.

5. Petitioners leased an apartment in Hong Kong sent their children to schools there, joined various social clubs and paid Hong Kong income taxes.

6. Petitioner Ann G. Berryman contended that she and her former husband intended to ultimately make the Far East their permanent home as they enjoyed its culture and way of life.

7. Petitioner Donald J. Berryman, deceased, was notified by the Corporation in November of 1973 that it was terminating its Far Eastern operation. He was required to remain in Hong Kong until 1974 for the purpose of closing corporate offices located in various parts of the world.

8. Petitioner, Ann G. Berryman, contended that petitioner, Donald J. Berryman, extended his time in the Far East for the purpose of obtaining Federal income tax benefits.

9. Petitioners did not renounce their United States citizenship.

10. Petitioner Donald J. Berryman's will, was executed in New York State and was retained by petitioner's New York attorney for safekeeping.

11. In 1974 petitioners returned to the United States and established a residence in New Jersey.

CONCLUSIONS OF LAW

A. That petitioners failed to establish that their move to Hong Kong was made with the bona fide intention of making their fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time (20 NYCRR 102(d)(2)).

B. That 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; Matter of Bodfish v. Gallman, 50 AD2d 457). 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 (20 NYCRR 102.2(d)(3)). Petitioners failed to establish that they intended to remain in Hong Kong permanently, therefore, petitioners are New York domiciliaries.

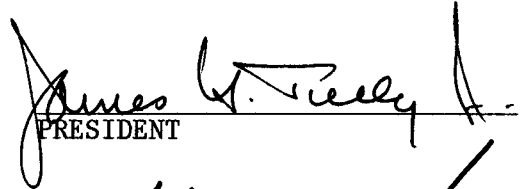
C. That since petitioners were domiciliaries of New York State during 1973 and failed to satisfy all three of the criteria set forth in 605(a)(1) of the Tax Law, which would have enabled them to be treated as nonresidents although domiciled in New York, they are New York State residents for 1973 in accordance with the meaning and intent of sections 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

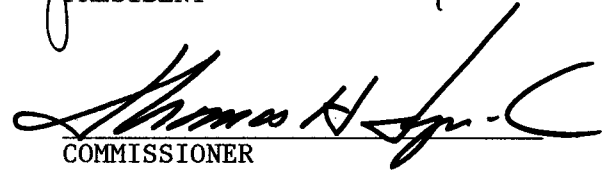
D. That the petition of Donald J. Berryman, deceased, and Ann G. Berryman is denied, and the Notice of Deficiency dated May 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER