

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jack C. Brueckman, Jr. :
and Carol A. Brueckman :
: 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

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Jack Brueckman, Jr., and Carol A. Brueckman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack C. Brueckman, Jr.
and Carol A. Brueckman
59 Treehaven Road
West Seneca, NY 14224

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
10th day of April, 1981.

James A. Hagedorn

[Signature]

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

April 10, 1981

Jack C. Brueckman, Jr.
and Carol A. Brueckman
59 Treehaven Road
West Seneca, NY 14224

Dear Mr. & Mrs. Brueckman:

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
JACK C. BRUECKMAN, JR. and CAROL A. BRUECKMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1974.

DECISION

Petitioners, Jack C. Brueckman, Jr. and Carol A. Brueckman, 59 Treehaven Road, West Seneca, New York 14224, 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. 17589).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on October 1, 1980 at 2:45 P.M. Petitioner Jack C. Brueckman, Jr., appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners were residents and domiciliaries of New York State for the entire year of 1974.

FINDINGS OF FACT

1. Petitioners filed a New York State Resident Income Tax Return for the year 1974. On this return petitioners claimed to be New York State residents from January 1, 1974 to September 14, 1974. Petitioners subtracted \$6,838.00 from total Federal adjusted gross income of \$23,003.00, on the grounds that this income was earned after September 14, 1974 and, therefore, was not subject to New York State tax.

2. On December 20, 1976, the Audit Division issued a Statement of Audit Changes against petitioners, Jack C. Brueckman, Jr. and Carol A. Brueckman, imposing additional New York State personal income tax for 1974 on the grounds that petitioners did not change their status as New York residents. Accordingly, the Audit Division issued a Notice of Deficiency for \$551.75, plus interest of \$49.15, less overpayment on return of \$208.00, for an amount due of \$392.90.

3. In August 1974, petitioner Jack C. Brueckman, Jr. signed a renewable two-year employment agreement with Pacific Architects & Engineers, Inc. and Resources Management International Ltd. (hereinafter "PAE/RMI") to become its project manager and educational specialist in Jakarta, Indonesia. He took a leave of absence with his New York employer, Buffalo University, as of August 31, 1974 and began his new position with PAE/RMI in Jakarta, Indonesia on September 14, 1974.

4. During the period at issue, PAE/RMI was a consultant to Pertamina, the Indonesian national oil company. Pertamina recognizing the overriding importance of modern technology to its oil business and related industries, committed itself to the creation of a new school of technology near Jakarta called Jenderal Achman Yani Polytechnic Institute. PAE/RMI was to provide the expertise needed to prepare an educational master plan, design curricula, develop staff and organizational programs, provide conceptual architectural design and specify equipment.

Petitioner Jack C. Brueckman, Jr. accepted the position with PAE/RMI because of the challenge of designing and building a college from the ground up. From the start the petitioner believed he might be the American counterpart to president of the college and would be remaining in Indonesia for an extended period of time. It had been projected the initial phase of the project would be completed sometime after 1982 with the petitioner working beyond that time.

5. Prior to leaving the United States, the petitioners sold their automobiles and other personal property. Petitioners attempted to sell and/or lease their personal residence in New York. Before departing for Indonesia, they gave petitioner Carol A. Brueckman's brother authority to seek a buyer for their New York home and jurisdiction to manage all financial affairs that could not be handled from Indonesia. All other personal property and household effects were removed from the New York premises and transported to Jakarta, Indonesia. In Indonesia, the petitioners' leased a home in a foreign compound.

6. In August 1975, petitioners returned to New York upon the abandonment of the Indonesia project.

CONCLUSIONS OF LAW

A. That generally, "residence" is not synonymous with "domicile"; sometimes the word "residing" is synonymous with the word "sojourn"; generally, "residents" are somewhere between persons just passing through a place and persons who are permanent inhabitants thereof. (In re YAP, 241 N.Y.S.2d 976, 39 Misc.2d 835.)

That:

"...(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. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return." [20 NYCRR 102.2(d)(3)].

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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home." [20 NYCRR 102.2(d)(2)].

The general presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

That petitioners moved to Indonesia with the intention that petitioner Jack C. Brueckman, Jr. would work there and said residence in Indonesia was related to Mr. Brueckman's employment. That the petitioners have failed to sustain the burden of proof in accordance with section 689(e) of the Tax Law that they intended to remain in Indonesia permanently and that petitioner Jack C. Brueckman's employment there was only incidental to their move. Therefore, the petitioners' domicile remains in New York.

B. That since petitioners were domiciliaries of New York during 1974, maintained a permanent place of abode in New York from January 1 through September 14, 1974 and spent more than 30 days in New York State during said year, they were, therefore, resident individuals for the entire year in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

C. That the petition of Jack C. Brueckman, Jr. and Carol A. Brueckman is denied and the Notice of Deficiency issued on December 20, 1976 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER