

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chester Carity :
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 :
1968. :

AFFIDAVIT OF MAILING

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Chester Carity, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chester Carity
1 Lincoln Plaza
New York, NY 10023

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
25th day of September, 1981.

Annice A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chester Carity :
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 :
1968.

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Joseph H. Murphy 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 H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202

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
25th day of September, 1981.

Annie A. Haglund

[Signature]

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

September 25, 1981

Chester Carity
1 Lincoln Plaza
New York, NY 10023

Dear Mr. Carity:

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 H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CHESTER CARITY
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1968.

:
:
:
:
:
:
:

DECISION

Petitioner, Chester Carity, One Lincoln Plaza, New York, New York, 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 1968 (File No. 1039).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 7, 1979 and continued on August 14, 1979. Petitioner appeared by Arnold Berman, CPA and by Hancock, Estabrook, Ryan, Shove & Hust, Esqs., (Joseph H. Murphy and Parker Brown, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron and Irving Atkins, Esqs., of counsel).

ISSUE

Whether the petitioner changed his domicile from New York to New Jersey prior to the sale of certain securities on October 31, 1968.

FINDINGS OF FACT

1. A Notice of Deficiency for the year 1968 was issued on June 20, 1971 against Chester Carity in the amount of \$113,924.32, plus interest of \$15,032.82, for a total of \$128,977.14.

2. Petitioner was raised in New York City, received his education as a student at Townsend Harris Hall High School, and upon graduation attended the

City College for a time. He has been in the advertising business for most of his life. In 1961, petitioner formed with others AMREP Corporation to engage in real estate sales and construction. Since then, he has devoted more and more time to that business.

3. Petitioner is a bachelor.

4. Prior to October, 1968, petitioner lived in Apartment 22B, Lincoln Square Apartments, Inc., 205 West End Avenue, New York City, New York, known as "Lincoln Towers".

5. Petitioner had suffered from severe back problems for a number of years, having been hospitalized in 1966. He was advised that swimming would improve his back condition.

6. In the Spring of 1968, petitioner started looking for living accommodations with an indoor swimming pool. In March or April of that year, he began having his secretary note advertisements for dwellings which advertised year-round swimming and which were within commuting distance of his office. He visited a number of these places, including Horizon House and Mediterranean Towers in Fort Lee, New Jersey. He also collected information on country clubs in New Jersey, Westchester, and Long Island. However, he was unable to find what he wanted at this time and stopped looking in May, 1968.

7. In early October, 1968, petitioner's brother-in-law, Mr. Henry Hoffman, and petitioner's sister, Mrs. Lyla Hoffman, who then lived in a double apartment in Lincoln Towers, reported to petitioner that they had found a house at 188 Hillside Avenue, Cresskill, New Jersey, which they liked, but which was too large for their family alone. They persuaded the petitioner to visit it with them; and he did so, coming away favorably impressed, particularly as it had an indoor swimming pool.

8. On October 14, 1968, a contract of purchase was executed by the Hoffmans and petitioner. Petitioner gave his check for \$37,500.00 as a one-third share of the purchase price. He agreed to pay the balance of the costs for repairs, renovation, etc., on a one-third basis. On the same day, the seller of the house obtained an Occupancy Certificate from the Borough of Cresskill, New Jersey, approving habitation in the structure. Possession of the premises was taken by petitioner on October 15, 1968, and title to the property passed on October 16, 1968.

9. Cresskill, New Jersey is located about a mile over the George Washington Bridge, inland from the Hudson River. Petitioner's property consisted of nearly one acre of land with a hill, slope and a stream. It had a large amount of frontage. The house itself was huge. As shown on the hand-drawn floor plan, which was prepared by petitioner and received as his Exhibit 4, it had five bedrooms, four on one side of the house and a fifth on the other. The dwelling also had an area originally designed as a studio apartment with its own entrance, a separate bath, ample closet space, a door which separated it from the rest of the house, and direct access to the swimming pool. It was a wing of the house which, in effect, constituted a separate apartment, and it was there that petitioner was to live. The four bedroom wing was to be occupied by the Hoffmans and their youngest child.

10. Because the furniture in petitioner's New York apartment had originally come from a previous Greenwich Village apartment, most of it was not suitable for the New Jersey home. However, petitioner's sister, Mrs. Hoffman, had ample furniture for the new house, including petitioner's quarters. On October 15, 1968, this furniture was moved to the New Jersey residence and installed there.

11. On moving day, October 15, 1968, petitioner brought his clothes, personal effects, a chest of drawers and a chair from his apartment to his sister's apartment, across a courtyard at Lincoln Towers. These were taken by the movers, along with the Hoffman furniture, to the Cresskill, New Jersey residence. The move was completed and the furniture installed on October 15, 1968.

12. Petitioner's quarters in the New Jersey house were initially furnished with a rug and a studio couch, a room divider, with a bench on one side and a double bed on the other, a television set, two chairs, two chests of drawers, some lamps, a bookcase, pictures, etc. Petitioner took out a homeowner's insurance policy on his Cresskill residence and its contents.

13. Commencing on October 15, 1968, petitioner spent no more time (nights or days) at his former Lincoln Towers apartment. He spent the night of October 15, 1968 and the nights thereafter in his New Jersey residence, occupying a spare bedroom in the Cresskill house until his quarters there were completely set up and thereafter moving into them. His car was garaged at Cresskill. He lived at Cresskill and no place else, occupying no quarters elsewhere, temporary or otherwise, until 1972.

14. On October 16, 1968, petitioner's attorney sent a letter to the New Jersey real property taxing authorities advising them of his ownership of the Cresskill property. Petitioner also sent letters on October 15, 1968 to concerns with which he had charge accounts, credit cards, magazine subscriptions, etc. (Macy's, Cue magazine, World Tennis, Eastern Airlines, Bloomingdale's, Brownings Fifth Avenue, Wallach's, Weber & Heilbroner, Golden-Penn Theatre Ticket Service, Abercrombie & Fitch) advising them of his change of address. Petitioner advised his car rental agency of his new

residence and his plates were changed from New York to New Jersey. He applied for and obtained a New Jersey operator's license. On October 15, 1968, he advised the New York State Department of Motor Vehicles of his change of address. When his pistol permit came up for its annual renewal, he advised of his change of address. He notified the Post Office of his change of address and had his mail forwarded. Following his move, petitioner did not register or vote again, and his registration to vote in New York was cancelled.

15. When petitioner moved from New York City on October 15, 1968, he did so with the intent of abandoning his home there. When he moved to his Cresskill, New Jersey residence, he did so with the intention of making it his home.

16. On October 15, 1968, petitioner sublet his New York City apartment at Lincoln Towers to Mr. David Yagoda, a friend neither related to him nor associated with him in business, who had been flooded out of his office in Brooklyn and who wished to sublease petitioner's apartment for business reasons. Under petitioner's lease of the Lincoln Towers apartment, petitioner paid \$272.00 per month, unfurnished. He subleased it furnished to Mr. Yagoda for \$330.00 per month. Mr. Yagoda took possession on October 15, 1968. The sublease ran from October 15, 1968 through August 31, 1971 to coincide with the expiration of Mr. Carity's lease on the Lincoln Towers apartment.

17. The landlords of his New York City apartment would not permit Mr. Carity's name to be removed from the building list of tenants, nor did they permit Mr. Yagoda's name to be added. The landlords had approved having Mr. Yagoda's name placed on the mail box. Mr. Carity had requested the New York Telephone Company to permit Mr. Yagoda to retain Mr. Carity's telephone number.

18. Petitioner's will was executed in his office on October 23, 1968. It was fifteen pages in length and opened with the following: "I, CHESTER CARITY, of the City, County and State of New York, do hereby make, publish and declare this my Last Will and Testament." This language had been contained since its first draft prepared on or before June 14, 1968. The attorney who prepared it was not aware of petitioner's change of circumstances. Petitioner, upon his final review of the will on October 23, focused on only substantive changes in the will and did not examine the opening language. Later, the attorney did learn of petitioner's change of domicile to New Jersey. He prepared a codicil to the will, reciting New Jersey residence and disposing of petitioner's New Jersey property. This was executed on October 2, 1969.

19. Petitioner was the seller of 57,250 shares of stock of AMREP Corporation, which had been incorporated in Oklahoma in 1961. He was its executive vice-president and a thirteen percent stockholder. Petitioner and some of the other stockholders of AMREP decided to sell some of their stock. To this end, they had, from time to time, discussed this matter with various securities people, but nothing had come of these discussions. However, in the Fall of 1968, they were able to make an arrangement with an investment banking concern, Goodbody & Co., to market the shares to the public. A syndicate was formed and a prospectus was prepared. The prospectus was approved by the Securities and Exchange Commission on October 23, 1968, and an agreement with the underwriters was made on the same date. While the price of the stock was set in this agreement, it was not binding unless on October 31, 1968, the date fixed for the sale, the underwriters were able to sell all the stock. If not, they would have the right to withdraw from the agreement. The actual sale of the stock occurred on October 31, 1968. It was on that date that the underwriters knew

that they had buyers for all of the stock offered, and this was a condition of the sale. On October 31, 1968, petitioner received a check for \$1,594,412.50 in payment for the shares he had sold.

20. The prospectus prepared for the sale of petitioner's AMREP stock, approved by the Securities and Exchange Commission on October 23, 1968, contained his New Jersey address.

21. For the year 1968, petitioner filed two New York State tax returns: a resident return (IT-201), covering the period January 1, 1968 to October 15, 1968; and a nonresident return (IT-203), covering the period October 15, 1968 through December 31, 1968, both signed by petitioner on April 15, 1969.

22. In 1972, petitioner moved to Fort Lee, New Jersey. When petitioner eventually returned to New York City in 1974, he located in Lincoln Plaza, an apartment complex in an area entirely different from his former abode at Lincoln Towers.

CONCLUSIONS OF LAW

A. That section 605 of the Tax Law provided (during the years in question) as follows:

"Sec. 605. Resident and nonresident defined. --

(a) Resident individual. -- A resident individual means an individual:

(1) who is domiciled in this state, unless

(A) 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 or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States."

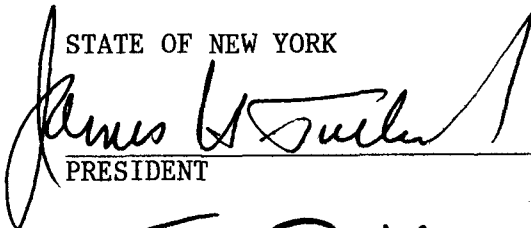

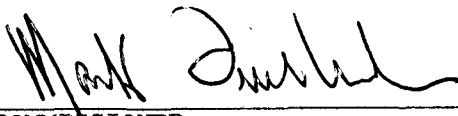
B. That petitioner has adequately shown that he changed his domicile from New York to New Jersey on or about October 15, 1968 and before his sale of securities on October 31, 1968. In particular, the facts that petitioner retained an interest in a New York apartment and did not immediately change his will to show a change of domicile are not sufficient to negate his clearly manifested intent to change his domicile.

C. That the petitioner's retained interest in a New York apartment after October 15, 1968 and, while someone else was living there, is not sufficient to constitute that apartment as a permanent place of abode of petitioner. Therefore, petitioner did not maintain a permanent place of abode in New York for the taxable year 1968 and is thus not a full year resident of New York.

D. That the petition is granted and the notice of deficiency is cancelled.

DATED: Albany, New York

SEP 25 1981

STATE OF NEW YORK

PRESIDENT

COMMISSIONER

COMMISSIONER