

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Henry & Rita Fisher :
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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Henry & Rita Fisher, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry & Rita Fisher
8701 Shore Rd.
Brooklyn, NY 11209

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
30th day of October, 1981.

Carrie A. Haglund

J. Vredenburg

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

October 30, 1981

Henry & Rita Fisher
8701 Shore Rd.
Brooklyn, NY 11209

Dear Mr. & Mrs. Fisher:

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	:	
	:	
HENRY FISHER and RITA FISHER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22 :	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Henry Fisher and Rita Fisher, 8701 Shore Road, Brooklyn, New York 11209, 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. 24088).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 4, 1981 at 1:15 P.M. Petitioner Rita Fisher appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner Rita Fisher was domiciled in, and a resident of New York State during the entire year 1974.

FINDINGS OF FACT

1. Petitioner Henry Fisher filed a separate New York State Income Tax Resident Return for the year 1974. Petitioner Rita Fisher did not file a New York State personal income tax return for 1974, however she did file a return with the State of Virginia for said year.

2. On February 1, 1978 the Audit Division issued a Statement of Audit Changes to petitioners wherein it held petitioner Rita Fisher to be a New York

State resident for the entire year at issue on the ground that "Removal from New York State to accept a temporary job outside the State does not constitute a change of domicile". Accordingly, her income derived during 1974 was held taxable to New York State. Since, as stated, she did file a return for the State of Virginia, credit was allowed in the computation of her New York State liability for taxes of \$486.80 paid to said State. A deficiency was asserted against petitioner Henry Fisher solely due to an adjustment reducing his claimed capital loss to the statutory maximum of \$500.00. This adjustment was not contested by petitioners. Accordingly, a Notice of Deficiency was issued against petitioners on April 4, 1978 asserting additional personal income tax of \$590.50, plus interest of \$149.06, for a total due of \$739.56.

3. During 1965 Rita Fisher (hereinafter petitioner) commenced employment as personal secretary to J. W. Middendorf, who at that time was senior partner in the New York brokerage firm of Middendorf, Colgate & Co. Prior to 1974, when Mr. Middendorf was appointed Secretary of the Navy, he requested that petitioner accompany him to Washington, D.C. to continue on as his personal secretary, which she did.

4. During petitioners three and one half year stay in the Washington, D.C. area, she resided at several different locations in Virginia, most of which were unfurnished dwellings which she leased or subleased for relatively short durations.

5. Petitioner, who was born and raised in New York, continued to maintain her New York apartment during her entire stay in the Washington, D.C. area since her husband and daughter still resided in New York.

6. During 1974, petitioner spent most weekends visiting her family in New York.

7. Petitioner testified that the sole reason she went to Washington, D.C. was to continue her employment with Mr. Middendorf. Her intent was to return to New York State at the conclusion of his appointed term, which she did in 1977.

CONCLUSIONS OF LAW

A. 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. (20 NYCRR 102.2(d)(2))

Since petitioner Rita Fisher's removal to the Washington, D.C. area was solely for the limited period of Mr. Middendorf's appointment, no change of domicile had occurred. Accordingly, she remained a New York domiciliary during the entire year 1974.

B. That pursuant to section 605(a) of the Tax Law and 20 NYCRR 102.2(b), any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State, (2) he maintains a permanent place of abode elsewhere, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State.

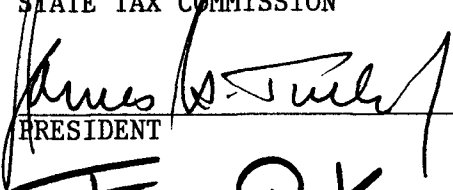
Since petitioner Rita Fisher has not satisfied the requirements as set forth above, she is deemed to have been a resident of New York State during the entire taxable year 1974.

C. That the petition of Henry Fisher and Rita Fisher is denied and the Notice of Deficiency dated April 4, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER