

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Raymond H. Giles, Jr. :
and Enid Giles :
: 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

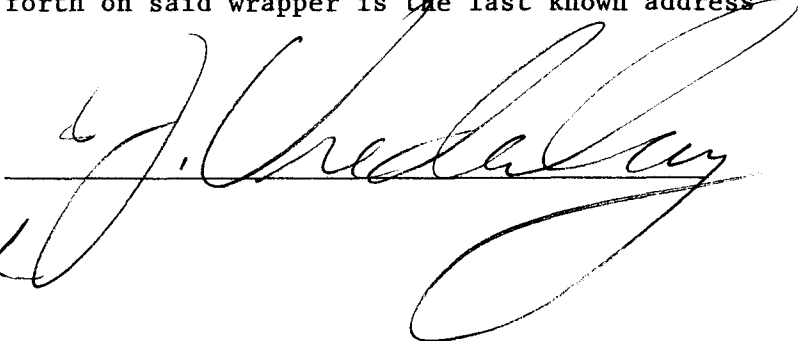
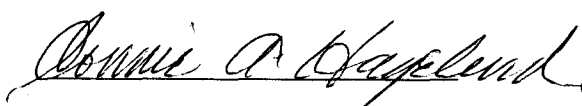
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of July, 1981, he served the within notice of Decision by certified mail upon Raymond H. Giles, Jr., and Enid Giles the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond H. Giles, Jr.
and Enid Giles
B/A CSI
7 Church Road
Birmingham, B 15 3TN, England

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
31st day of July, 1981.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joel Annis :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1971 through 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 31st day of July, 1981, he served the within notice of Decision by certified mail upon John R. Serpico the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201

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
31st day of July, 1981.

Annie A. Haglund

J. Vredenburg

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

July 31, 1981

Raymond H. Giles, Jr.
and Enid Giles
B/A CSI
7 Church Road
Birmingham, B 15 3TN, England

Dear Mr. & Mrs. Giles:

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
Raymond H. Giles
860 E. 216th St.
Bronx, NY 10467
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RAYMOND H. GILES, JR. and ENID GILES	:	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, Raymond H. Giles, Jr. and Enid Giles, 860 East 216th Street, Bronx, New York 10467, 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. 17938).

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 January 26, 1981 at 1:15 P.M. Petitioner Raymond H. Giles, Jr. appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in, and residents of the State of New York during taxable year 1974.

FINDINGS OF FACT

1. Petitioners, Raymond H. Giles, Jr. and Enid Giles, filed a joint New York State Income Tax Resident Return for the year 1974 whereon Raymond H. Giles, Jr. (hereinafter petitioner) reported only those wages derived from New York sources, thereby excluding wage income earned in the State of Massachusetts. Although said return gave no indication, petitioner excluded

his income from sources without New York since he claims to have been a resident of Massachusetts during the year at issue.

2. On March 23, 1976, the Audit Division issued a Statement of Audit Changes to petitioners wherein, as a result of audit, they were held to be residents of New York State during the entire taxable year. Additionally, adjustments were made disallowing a claimed rental loss and a portion of employee business expenses claimed, but since such adjustments were not contested, they are therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on January 24, 1974 asserting additional personal income tax of \$1,193.38, plus interest of \$180.37, for a total due of \$1,373.75.

3. On January 22, 1969, petitioner was legally separated from his wife. Pursuant to the terms of the written separation agreement executed on said date, petitioner ceased residing at their jointly owned house located at 860 East 216th Street, Bronx, New York, while his wife and two children continued to occupy same.

4. During the latter part of 1970, petitioner terminated his employment and moved to Massachusetts to be close to a friend. Subsequent to his arrival in Massachusetts he leased an unfurnished apartment located at 2 Rolling Green in Amherst, Massachusetts. During 1971 and 1972 petitioner earned a living as an independent consultant.

5. After the expiration of his two year lease at 2 Rolling Green, petitioner moved to another unfurnished apartment located at 167 Village Park, also in Amherst, Massachusetts. He resided there until 1976, at which time he moved temporarily to England, thereafter returning to Massachusetts in 1978.

6. During 1973 petitioner secured employment as a full-time member of the faculty of the Afro-American Studies & Education Department at Smith College, Northampton, Massachusetts. Said employment continued until 1976 at which time he was granted a leave of absence and moved to England on a temporary basis. Additionally, he was employed part time during 1974 by Lehman College, Bronx, New York, and the College of New Rochelle, New Rochelle, New York. He did consulting work for the Research Foundation C.U.N.Y. (Lehman College) and taught a ten-session course at the college on Tuesday evenings during the spring semester. During the fall semester he taught an eight-session course on Wednesday evenings at the College of New Rochelle.

7. Although petitioner did not reside at 860 East 216th Street during the year at issue, said address was reported on the wage statements issued by his New York employers. He explained that he gave that address to his New York employers since he believed it made it easier for him to secure such employment since the record showed that he lived in the New York area. As a matter of consistency, he used the same address on filing his tax returns. Petitioner contended that for years prior to 1974 he filed his returns using his Massachusetts address.

8. In addition to the previously described New York State return, petitioner filed a Massachusetts State Resident Return for taxable year 1974.

9. While residing in Massachusetts petitioner obtained a Massachusetts driver's license, a Massachusetts automobile registration and maintained an active account in the First National Bank of Amherst.

10. During 1974 petitioner spent twenty five days working part time in New York, two days in New York prior to traveling abroad, and a nominal number of unspecified days with his children in New York.

CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent (20 NYCRR 102.2(d)(1)). The facts adduced in the instant case lead to the conclusion that it was the intention of petitioner Raymond H. Giles, Jr. to make Massachusetts his permanent home. Accordingly, he was domiciled in the State of Massachusetts during taxable year 1974.

B. That since petitioner Raymond H. Giles, Jr. neither maintained a permanent place of abode in New York State nor spent in the aggregate more than 183 days of the taxable year in New York State he is deemed a nonresident of New York for taxable year 1974 within the meaning and intent of section 605(b) of the Tax Law.

C. That petitioner Enid Giles was a resident individual of New York State during the entire taxable year 1974.

D. That pursuant to section 611(b)(3) of the Tax Law, petitioners are entitled to file separate returns for 1974 since only Enid Giles was a resident of New York State. Accordingly, petitioners' tax liabilities are to be recomputed based on their separate New York taxable incomes.

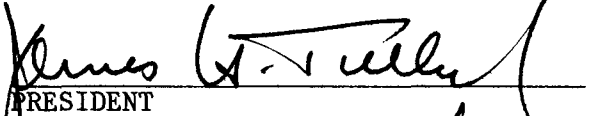
E. That the petition of Raymond H. Giles, Jr. and Enid Giles is granted to the extent provided in Conclusions of Law "A" and "B" supra.

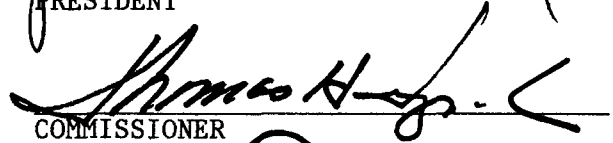
F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 24, 1977 to be consistent with the decision rendered herein.


DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK
NO.

361800

EMERY, MORD H. Giles
860 East 216th Street
Date 8/3/81
1ST NOTICE
Apt 7, Bronx, New York 10467

NOTICE
AUG 8 1981
AUG 18 1981

Detached from
PS Form 3848-A
Oct. 1979

OFFICE
P30-891376
MAIL

TAX APPEALS BUREAU
SEP 8 1981
RECEIVED

RE P
COPY

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

July 31, 1981

Raymond H. Giles, Jr.
and Enid Giles
B/A CSI
7 Church Road
Birmingham, B 15 3TN, England

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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
Raymond H. Giles
860 E. 216th St.
Bronx, NY 10467
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RAYMOND H. GILES, JR. and ENID GILES
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, Raymond H. Giles, Jr. and Enid Giles, 860 East 216th Street, Bronx, New York 10467, 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. 17938).

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 January 26, 1981 at 1:15 P.M. Petitioner Raymond H. Giles, Jr. appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

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his income from sources without New York since he claims to have been a resident of Massachusetts during the year at issue.

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4. During the latter part of 1970, petitioner terminated his employment and moved to Massachusetts to be close to a friend. Subsequent to his arrival in Massachusetts he leased an unfurnished apartment located at 2 Rolling Green in Amherst, Massachusetts. During 1971 and 1972 petitioner earned a living as an independent consultant.

5. After the expiration of his two year lease at 2 Rolling Green, petitioner moved to another unfurnished apartment located at 167 Village Park, also in Amherst, Massachusetts. He resided there until 1976, at which time he moved temporarily to England, thereafter returning to Massachusetts in 1978.

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B. That since petitioner Raymond H. Giles, Jr. neither maintained a permanent place of abode in New York State nor spent in the aggregate more than 183 days of the taxable year in New York State he is deemed a nonresident of New York for taxable year 1974 within the meaning and intent of section 605(b) of the Tax Law.

C. That petitioner Enid Giles was a resident individual of New York State during the entire taxable year 1974.

D. That pursuant to section 611(b)(3) of the Tax Law, petitioners are entitled to file separate returns for 1974 since only Enid Giles was a resident of New York State. Accordingly, petitioners' tax liabilities are to be recomputed based on their separate New York taxable incomes.

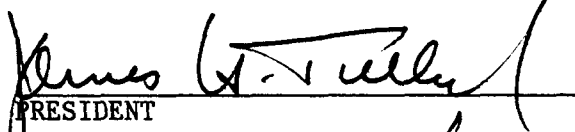
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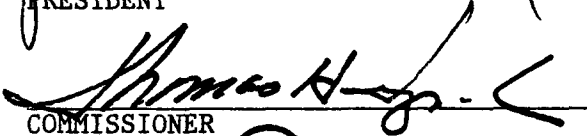
F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 24, 1977 to be consistent with the decision rendered herein.

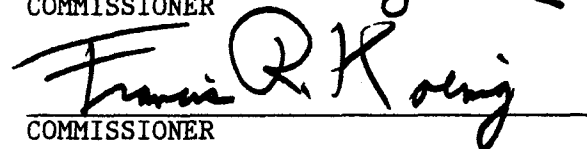
DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER