

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Philipp Goldmann :
and Eve D. Goldmann :
: 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 :
1976. :

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 Philipp Goldmann and Eve D. Goldmann the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

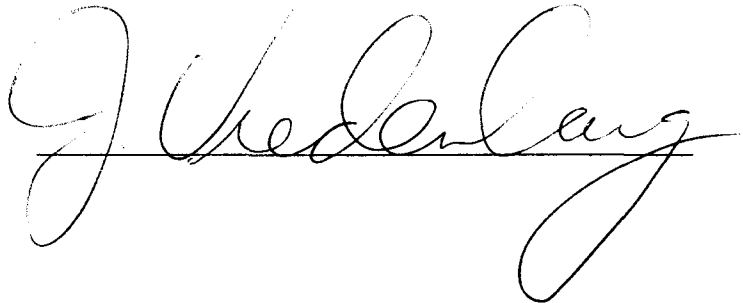
Philipp Goldmann
and Eve D. Goldmann
1570 Madruga Ave. #204
Coral Gables, FL 33146

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.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Philipp Goldmann :
and Eve D. Goldmann :
: 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 :
1976. :

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 Arnold J. Hodes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold J. Hodes
Arnold J. Hodes & Co.
2030 Erie Blvd. E.
Syracuse, NY 13224

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.

Carrie A. Haglund

J. Vredenburg

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

September 25, 1981

Philipp Goldmann
and Eve D. Goldmann
1570 Madruga Ave. #204
Coral Gables, FL 33146

Dear Mr. & Mrs. Goldman:

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
Arnold J. Hodes
Arnold J. Hodes & Co.
2030 Erie Blvd. E.
Syracuse, NY 13224
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHILIPP GOLDMANN and EVE D. GOLDMANN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1976.	:	

Petitioners, Philipp Goldmann and Eve D. Goldmann, 8221 S.W. 161 Street, Miami, Florida 33157, 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 1976 (File No. 27113).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on October 30, 1980 at 10:45 A.M. Petitioners appeared by Arnold J. Hodes, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners, Philipp Goldmann and Eve D. Goldmann, were residents and domiciliaries of New York State for the entire year 1976.

FINDINGS OF FACT

1. Petitioners, Philipp Goldmann and Eve D. Goldmann, filed a New York State Personal Income Tax Resident Return for the year 1976 reporting an overpayment of \$2,800.00 tax. Petitioners also filed a New York State Income Tax Nonresident Return and a Schedule for Change of Resident Status in which they indicated their period of New York residence to be from January 1, 1976 through August 8, 1976.

2. On February 23, 1979, the Audit Division issued a Notice of Deficiency for tax due of \$85.69 plus interest for the taxable year 1976. The Notice was issued on the grounds that a United States citizen will not 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 and never to return to the United States again. Since petitioners spent more than 30 days in New York State during 1976, they did not meet the requirements of section 605(a)(1) of the Tax Law. Therefore, the total income reported on the Federal return was held subject to New York State personal income tax.

3. Petitioner Philipp Goldmann worked and resided in New York State until August 8, 1976 at which time he moved to Rio de Janeiro to accept a position of indefinite term with Carrier International Corporation, a subsidiary of Carrier Corporation, as zone vice-president in charge of Latin America. Mr. Goldmann joined Carrier Corporation in 1941 and subsequently held a series of positions located both in the United States and abroad.

4. Prior to August of 1976 petitioners were domiciled in New York State. On August 1, 1976 petitioners sold their residence in New York State and secured a permanent residence visa in Brazil where they rented living quarters. Petitioners remained in Brazil until December 31, 1977 at which time Carrier International Corporation liquidated due to economic conditions.

5. Petitioners took residence in Coral Gables, Florida on January 1, 1978 awaiting construction of a permanent residence in Miami. Petitioners did not return to New York State.

6. Petitioners argued that a deficiency for the tax year 1970 had been cancelled under the same circumstances subsequent to their move to Tokyo; therefore, the deficiency for the year 1976 should also be cancelled.

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" (20 NYCRR 102.2(d)(2)). "However, 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)).

B. That petitioner Philipp Goldmann's career with Carrier Corporation was such that petitioners frequently changed residence. However, "mere change of residence although continued for a long time does not affect a change of domicile..." (Matter of Newcomb, 192 N.Y. 250).

C. That petitioners, Philipp Goldmann and Eve D. Goldmann, have failed to sustain the burden of proof pursuant to section 689(e) of the Tax Law to show that they intended to permanently remain in Brazil. Accordingly, they are considered domiciliaries of New York State and taxable as resident individuals pursuant to section 605(a) of the Tax Law.

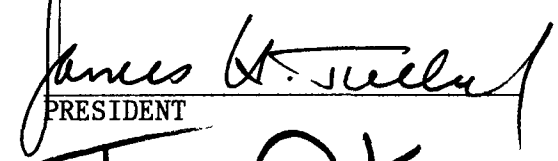
D. That tax assessments are to be viewed for each year and may be decided differently than in previous years either because the taxpayers' status has actually changed or because the tax officials become possessed of information to indicate it should be treated differently (Marx v. Goodrich, 286 A.D. 913, 142 N.Y.S.2d 28).

E. That the petition of Philipp Goldmann and Eve D. Goldmann is denied and the Notice of Deficiency issued February 23, 1979 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER