

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :

of

Robert E. Huntley, Jr. :

and Sherry J. Huntley :

: 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 :  
1975.

---

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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Robert E. Huntley, Jr. and Sherry J. Huntley the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert E. Huntley, Jr.  
and Sherry J. Huntley  
3379 Allston  
Jackson, MI 49201

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  
19th day of June, 1981.

Connie A. Hagelund

J. Vredenburg

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

June 19, 1981

Robert E. Huntley, Jr.  
and Sherry J. Huntley  
3379 Allston  
Jackson, MI 49201

Dear Mr. & Mrs. Huntley:

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	:	
ROBERT E. HUNTLEY, JR. and SHERRY J. HUNTLEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

---

Petitioners, Robert E. Huntley, Jr. and Sherry J. Huntley, 3379 Allston, Jackson, Michigan 49201, 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 1975 (File No. 20116).

On November 24, 1980, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

Whether petitioners were domiciled in, and residents of the State of New York during the entire year 1975.

FINDINGS OF FACT

1. Petitioners, Robert E. Huntley, Jr. and Sherry J. Huntley, timely filed a joint New York State Income Tax Resident Return for the period January 1 through October 13, 1975. Said return, wherein they computed a refund due of \$180.00, was filed in conjunction with a Schedule for Change of Resident Status form.

2. On July 15, 1976, the Audit Division issued a Statement of Audit Changes to petitioners wherein their tax liability was recomputed on the basis that they were domiciled in, and residents of the State of New York during the entire year 1975. Accordingly, a Notice of Deficiency was issued against petitioners on May 23, 1977 asserting additional personal income tax of \$282.77, plus interest of \$26.54, for a total due of \$309.31.

3. Petitioners were resident individuals of New York State during the period January 1 through October 13, 1975. At that time, petitioner Robert E. Huntley, Jr.'s employer transferred him to Ontario, Canada. He and his family moved to Canada with the intention to remain in Canada until such time that his employer would transfer him back to the United States.

4. After approximately a two year stay in Canada, petitioner Robert E. Huntley, Jr. was reassigned by his employer to Jackson, Michigan. While in Canada, petitioners retained their United States citizenship.

5. Petitioner Robert E. Huntley, Jr. contended that his domicile was changed to Canada upon leaving New York since he owned no property in New York State.

6. The record in the instant case is void of information with respect to the nature of the abodes maintained by petitioners in New York State and Canada, or the number of days spent in New York State during the year at issue herein.

#### 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))

B. 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. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individuals intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. (20 NYCRR 102.2(d)(2))

C. 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. (20 NYCRR 102.2(d)(3))

D. That since petitioners, by their own admission, did not intend to remain in Canada permanently, but rather only until such time as petitioner Robert E. Huntley, Jr. was "transferred back to the United States", a new domicile was not established in Canada. Accordingly, petitioners remained domiciled in New York State during the entire year 1975.

E. That 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 during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State. (20 NYCRR 102.2(b))

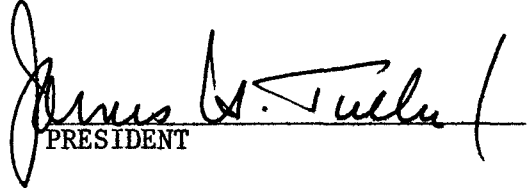
Since petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that they have satisfied all three of the aforementioned requirements they are deemed to have been residents of the State of New York during the entire year 1975.

F. That the petition of Robert E. Huntley, Jr. and Sherry J. Huntley is denied and the Notice of Deficiency dated May 23, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER