

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Anthony R. & Linda Koziol :

: 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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Anthony R. & Linda Koziol, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony R. & Linda Koziol
8305 Pershing Ave.
Niagara Falls, NY 14304

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
2nd day of October, 1981.

James R. Hegeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony R. & Linda Koziol :

: 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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon David L. Roach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David L. Roach
Blair & Roach
Suite 403, 170 Franklin Ave.
Buffalo, NY 14202

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
2nd day of October, 1981.

Carrie R. Hegeland

J. Vredenburg

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

October 2, 1981

Anthony R. & Linda Koziol
8305 Pershing Ave.
Niagara Falls, NY 14304

Dear Mr. & Mrs. Koziol:

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,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
David L. Roach
Blair & Roach
Suite 403, 170 Franklin Ave.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY R. KOZIOL and LINDA KOZIOL	:	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, Anthony R. Koziol and Linda Koziol, 8305 Pershing Avenue, Niagara Falls, New York 14304, 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. 14598).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 27, 1981 at 1:15 P.M. Petitioners, Anthony R. Koziol and Linda Koziol, appeared with David L. Roach. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile and residence from New York State to Canada during 1974.

FINDINGS OF FACT

1. Petitioners, Anthony R. Koziol and Linda Koziol, filed separate New York State income tax returns for 1974. Anthony R. Koziol indicated on his return that he was a resident of New York State for the period January 1, 1974 to April 21, 1974 and his wife indicated on her return that she was a resident of New York State for the period January 1, 1974 to August 16, 1974.

2. The Audit Division held that petitioners were domiciliaries of New York for the entire year of 1974; therefore, all income earned during said year was taxable. On April 12, 1976, a Notice of Deficiency was issued for \$374.30 in personal income tax due, plus \$27.05 in interest, less overpayment shown on return of \$53.40, for a net due of \$347.95.

3. During April 1974 petitioner Anthony R. Koziol, a New York State domiciliary, accepted an assignment from his employer, The Department of Treasury (U.S. Customs Services), as a customs inspector in Ontario, Canada. In August of 1974, petitioner Anthony R. Koziol returned to New York to marry Linda Moore. After the wedding the petitioners resided in a leased house in Canada. While in Canada, petitioner Linda Koziol worked for a Canadian employer.

4. Petitioners had, while in Canada, the following:

- 1) Canadian driver's licenses
- 2) Canadian car registration
- 3) Canadian bank accounts
- 4) Canadian credit cards

5. Petitioners contended that they had no intention of returning to New York State. Petitioner Anthony R. Koziol gave consideration to the idea of taking Canadian employment upon completion of his obligation to U.S. Customs Service.

6. Petitioners argued that they were not subject to New York State income tax based on statements from the personnel office of the Department of Treasury. The United States Government did not withhold New York State tax from petitioner Anthony R. Koziol upon his commencing employment in Canada.

7. During the year at issue the petitioners resided in Canada under an agreement between the Canadian and United States Governments concerning U.S. Customs Service employees and families living and working in Canada.

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)], even though such person may, at some future time, seek a home elsewhere, (McCarthy v. McCarthy, 39 N.Y.S.2d 922). The question of what place shall be considered the domicile of a party is one of fact rather than of law, (Pignatelli v. Pignatelli, 8 N.Y.S.2d 10). Evidence must be clear and convincing to establish required intention to effect a change in domicile. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Less evidence is required to establish a change of domicile from one state to another than from one nation to another, (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman, 50 A.D.2d 457). That petitioners have failed to establish by a preponderance of evidence that they changed their domicile from New York to Canada. That during the year at issue their acts might be found to be the establishment of residency and that the petitioners resided in Canada at the pleasure of both the Canadian and United States governments to perform a task there for U.S. Customs Services, however, no change of domicile took place.

B. That petitioners have failed to sustain the burden of proof required to show that they were domiciled in any place other than New York State during 1974, or that they intended to abandon their New York domicile when they went to reside in Canada. Therefore, they are considered to have been domiciled in New York State during 1974. They are taxable as residents of New York State for 1974 in accordance with section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), since (1) they maintained a permanent place of abode in New York State, (2) they did not maintain a permanent place of abode outside New York

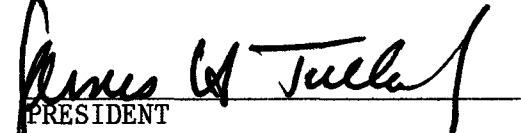
State for the entire taxable year and (3) they spent in the aggregate more than 30 days in New York State during 1974.

C. That the petition of Anthony R. Koziol and Linda Koziol is denied and the Notice of Deficiency issued April 12, 1976 is sustained, together with such additional interest as may be lawfully owing.

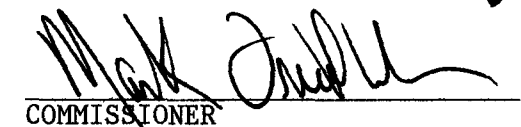
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER