

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Damon & Elaine Martin :

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 1972. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Damon & Elaine Martin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Damon & Elaine Martin
General Motors
767 Fifth Ave.
New York, NY 10022

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
5th day of February, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :

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Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1972. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Abraham J. Briloff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Abraham J. Briloff
52 Gramercy Park
New York, NY 10010

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
5th day of February, 1981.

Connie A. Haglund

J. Vredenburg

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

February 5, 1981

Damon & Elaine Martin
General Motors
767 Fifth Ave.
New York, NY 10022

Dear Mr. & Mrs. Martin:

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
Abraham J. Briloff
52 Gramercy Park
New York, NY 10010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DAMON MARTIN and ELAINE MARTIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Damon Martin and Elaine Martin, 1 Stoneleigh (Apartment 5K), Bronxville, New York, 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 1972 (File No. 12713).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1977 at 9:00 A.M. Petitioner appeared by Abraham J. Briloff, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the departure of petitioners, Damon Martin and Elaine Martin, from New York State pursuant to a change of assignment of employment of petitioner Damon Martin with the same employer, and their establishment of a place of abode in London, England, constituted a change of domicile of said petitioners so as to change their status as New York State resident individuals under section 605(a) of the Tax Law for 1972.

FINDINGS OF FACT

1. Petitioners, Damon Martin and Elaine Martin, jointly filed both New York State resident and nonresident income tax returns for 1972, conceding New

York residency for tax purposes for the period January 1, 1972 to April 23, 1972, but claiming nonresidency from April 24, 1972 to December 31, 1972, indicating their address at that time as c/o G.M. Holdens Pty., Ltd., Melbourne, Australia.

2. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Damon Martin and Elaine Martin, imposing additional income tax for 1972 of \$5,464.65, plus interest of \$802.31, making a total of \$6,266.96, on the ground that said petitioners were residents of New York State for the entire tax year in question and, therefore, all income earned within and without New York State and reported for Federal tax purposes (with certain exceptions not here relevant) is fully taxable to New York State. Accordingly, a Notice of Deficiency dated March 31, 1975 was issued for \$6,266.96, together with the aforesaid Statement of Audit Changes.

3. In January, 1972, Damon Martin was an employee of General Motors Overseas Corp. (hereinafter "GMOC"), performing services for that firm in the City and State of New York as manager of the Appliance Components and Engineering Group.

4. By memorandum dated March 27, 1972, GMOC announced that, effective April 1, 1972, petitioner Damon Martin was appointed Regional Manager of the firm's northern European operations and would be reassigned to London, England. Said petitioner's predecessor, who held the position for approximately 3 years, was to remain in London on another assignment.

5. Prior to the April 1, 1972 reassignment, and during more than 30 years' employment with GMOC, petitioner Damon Martin had been posted to approximately seven assignments or job functions of varying durations, each in a different geographical location.

6. The April 1, 1972 assignment of petitioner Damon Martin to GMOC's London office was not pursuant to a written contract of employment and was of indefinite duration.

7. At the time of the April 1, 1972 reassignment, petitioners, Damon Martin and Elaine Martin, were domiciliaries of New York State, maintaining a permanent residence or place of abode at 178 Mamaroneck Road, Scarsdale, New York, a private home constructed by and for said petitioners in 1968. Said petitioners lived in that home continuously from 1968 to April 23, 1972 when petitioner Damon Martin departed for London. At that time, petitioner Elaine Martin remained at the Scarsdale home with said petitioners' son (a high school student) and youngest daughter (a college student). Said petitioners' oldest daughter resided and attended college in Virginia at that time.

8. Around the time of his reassignment to London, petitioner Damon Martin initiated the procedure whereby GMOC would make an offer to purchase the Scarsdale home, a standard practice with respect to transferred high-level executives of that firm.

9. On April 23, 1972, petitioner Damon Martin left New York State to assume his newly-assigned duties in London. On his arrival in that city, said petitioner rented and lived in a furnished apartment, intending it to be quarters of a temporary nature, until such time that a suitable house could be located and purchased. He also applied for and received both a residence visa and work permit.

10. From June 23 to June 30, 1972, both inclusive, petitioner Damon Martin vacationed in New York State, residing with his family at the Scarsdale home. During that vacation, and on or about June 26, 1972, said petitioner accepted GMOC's offer to purchase the Scarsdale home for \$120,000.

11. On or about June 29, 1972, petitioners, Damon Martin and Elaine Martin,

permanently vacated the Scarsdale house, temporarily residing in a hotel in White Plains, New York, so that the movers could pack their belongings for shipment to England.

12. From July 5 to July 7, 1972, both inclusive, petitioner Damon Martin attended a management seminar in Glen Cove, New York.

13. On or about July 7, 1972, the closing on the Scarsdale home occurred and title thereto was transferred to GMOC.

14. On July 8, 1972, petitioners, Damon Martin and Elaine Martin, together with their children, journeyed to London, residing on their arrival, in the furnished apartment which petitioner Damon Martin had rented prior thereto.

15. From October 1 to October 4, 1972, both inclusive, petitioner Damon Martin attended business meetings in GMOC's New York City offices.

16. On or about December 1, 1972, petitioners, Damon Martin and Elaine Martin, purchased a home at 52 Cannons Drive, Edgeware, Middlesex, England, for the price of \$150,000.00. Due to required alterations, actual possession thereof was delayed until March, 1973.

17. Petitioners, Damon Martin and Elaine Martin, did not maintain a permanent place of abode in New York State after July 7, 1972; did not maintain a mailing address in New York State; did not keep or store any furniture or furnishings in New York State after July 7, 1972, having all their belongings shipped to London; did not register a car in New York State after July 7, 1972, having sold all of the vehicles owned in New York State prior to their departure; used a rented car in London; maintained both a savings and checking account in New York State after April 23, 1972 and, at the very least, a savings account in New York State after July 7, 1972; opened a checking account in London; did not vote or maintain their registration to vote in any New York State election after July 7, 1972; did not maintain any brokerage accounts in

New York State after July 7, 1972; engaged an English accounting firm to handle their affairs and prepare tax returns; and, effective April, 1972, paid taxes to England on income.

18. Petitioners, Damon Martin and Elaine Martin, did not belong to any social or professional clubs or organizations in New York State either before or after their July 8th departure.

19. The wills of petitioners, Damon Martin and Elaine Martin, were executed February 18, 1954, while they were residents of the State of Illinois. Petitioners did not execute codicils to the wills.

20. After July 7, 1972, and while in England, none of petitioners' children resided or attended school in the United States.

21. Effective June 1, 1973, petitioner Damon Martin was appointed Assistant Managing Director, General Motors - Holden's Pty., Ltd., in Australia and, effective July 1, 1973, said petitioner became the managing director of that firm.

22. Petitioners, Damon Martin and Elaine Martin, resided in Australia from a period commencing June or July, 1973 and ending in or about January, 1976 when petitioner Damon Martin was reassigned to New York City as general director for GMOC's Middle Eastern and African operations.

23. The United States Internal Revenue Service has not initiated a proceeding of any kind or nature whatsoever with respect to the exclusion of income earned abroad after April 23, 1972, which exclusion was claimed by petitioners, Damon Martin and Elaine Martin, on the ground that they were bona fide foreign residents for that period.

CONCLUSIONS OF LAW

A. That sections 601 and 611 of the Tax Law impose a tax, inter alia, on

all New York State resident individuals as defined in section 605(a) of the Tax Law.

B. That, to change one's domicile, there must be an intent to make the new location a fixed and permanent home, coupled with an actual acquisition of a residence in the new locality. Klein v. State Tax Comm., 55 AD2d 982, 390 NYS2d 686 (3rd Dept. 1977), aff'd., 43 NY2d 812, 402 NYS2d 396 (1977); Bodfish v. Gallman, 50 AD2d 457, 378 NYS2d 138 (3rd Dept. 1976).

C. That, while the evidence to establish the requisite intention to effect a change of domicile must be clear and convincing, Klein v. State Tax Comm., 55 AD2d at 984, 390 NYS2d at 688; Bodfish v. Gallman, 50 AD2d at 458, 378 NYS2d at 140, the question is not whether the taxpayer intends to leave New York forever, but whether he intends to make the new location his "permanent home ... with the range of sentiment, feeling and permanent association with it." Starer v. Gallman, 50 AD2d s8, 31, 377 NYS2d 645, 648 (3rd Dept. 1975).

D. That any period of residence, however short, even a day, when coupled with the requisite intent, is sufficient to establish a new domicile. Klein v. State Tax Commission, 55 AD at 984, 390 NYS2d at 688, citing Dupuy v. Wurtz, 53 NY 556 (1873).

E. That, if domicile is established in New York State, there is a basis for taxation therein, and presence in this State is not necessary in order for such tax to be assessed against the taxpayer. Starer v. Gallman, 50 AD2d at 31, 377 NYS2d at 648.

F. That the presumption against a foreign domicile is stronger than the general presumption against a change of domicile from one state to another. Klein v. State Tax Commission, 55 AD2d at 983, 390 NYS2d at 687; Bodfish v. Gallman, 50 AD2d at 458, 378 NYS2d at 140-141.

G. That domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests on the party who alleges a change. Bodfish v. Gallman, 50 AD2d at 459, 378 NYS2d at 141.

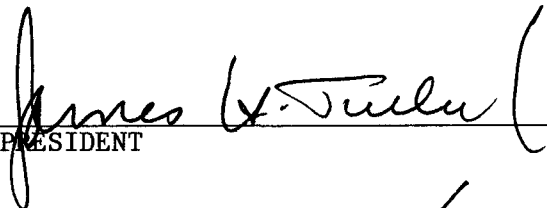
H. That petitioners, Damon Martin and Elaine Martin, have failed to sustain their burden of proof imposed by section 689(e) of the Tax Law to show that a bona fide intention existed to abandon their New York domicile and establish a new domicile in England during 1972. That petitioners were residents of New York within the meaning and intent of section 605(a)(1) of the Tax Law for the entire year 1972.

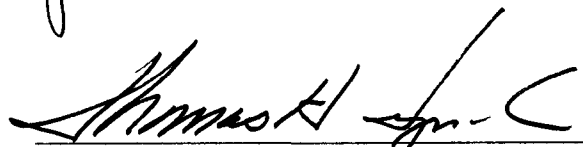
I. That the petition of Damon Martin and Elaine Martin is denied in all respects and the Notice of Deficiency issued March 31, 1975 is sustained together with such additional interest as may be lawfully due.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 05 1981


PRESIDENT


COMMISSIONER


COMMISSIONER