

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas & Helen McLaren :  
: 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

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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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Thomas & Helen McLaren, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas & Helen McLaren  
11 Barrett Road  
Katonah, NY 10536

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  
15th day of May, 1981.

*Cornie A. Dayland*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas & Helen McLaren :

: 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 :  
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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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Roderick B. Travis 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. Roderick B. Travis  
113 King St.  
Chappaqua, NY 10514

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  
15th day of May, 1981.

*James A. Hagelund*

*J. Vredenburg*

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

May 15, 1981

Thomas & Helen McLaren  
11 Barrett Road  
Katonah, NY 10536

Dear Mr. & Mrs. McLaren:

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  
Roderick B. Travis  
113 King St.  
Chappaqua, NY 10514  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS McLAREN and HELEN McLAREN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

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Petitioners, Thomas McLaren and Helen McLaren, his wife, 11 Barrett Road, Katonah, New York 10536, 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. 22073).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 20, 1979 at 2:45 P.M. and concluded at the same offices on December 6, 1979 at 1:00 P.M. Petitioners appeared by Roderick B. Travis, Esq. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciliaries of New York and taxable as residents for the entire year of 1976.

II. Whether petitioners were taxable as nonresidents from January 1, 1976 to August 31, 1976 and as residents from September 1, 1976 through the balance of the year.

FINDINGS OF FACT

1. Petitioners, Thomas A. McLaren and Helen T. McLaren, timely filed two joint New York State Income Tax returns for 1976, a form IT-201/208 as residents for four months and a Form IT-203/209 as nonresidents for eight months. A

Schedule for Change of Residence (Form CR-60.1) was filed with the tax returns. Attached thereto were copies of Schedules "D" and "E" pertinent to petitioners' Federal Income Tax Return (Form 1040) for 1976.

2. On March 8, 1978, a Notice of Deficiency was sent to petitioners asserting additional tax due of \$5,229.57, plus penalty and interest of \$397.02, for a total allegedly due of \$5,626.59. An accompanying Statement of Audit Changes delineated the taxes due as \$5,227.57 for New York State and \$200.00 for New York City. A computation of the personal income tax was included for both State and City. Inter alia, an explanation of the basis for the determination of petitioners' residency was set forth as follows:

"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 and (sic) he intends to remain there permanently. For example, a United States citizen domiciled in New York who goes abroad because of an assignment by his employer or for study, research or recreation does not lose his New York domicile unless it is clearly shown he intends to remain abroad permanently and not return. A citizen of (sic) United States residing abroad (sic) was domiciled in New York State would be considered a resident of New York State, for tax purposes for each taxable year that he fails to meet all three of the following conditions: (1) Maintains no permanent place of abode in New York during the taxable year, (2) did maintain a permanent place of abode outside New York State during the entire taxable year, (3) and, was in New York State for an aggregate period of not more than 30 days during such year. As a resident, he would be subject to tax on income received from all sources, including income earned abroad, to the extent included in his Federal adjusted gross income and is subject to specific modifications required by New York State Income Tax Law. A domiciliary of New York is generally taxable as a resident for the year he departs in New York State and the year he returns and, in most instances, he would not fulfill the three conditions during those years. The portion of long-term capital gains not subject to New York personal income tax is items of tax preference and subject to New York minimum income tax."

3. On May 31, 1978, petitioners timely filed a petition for redetermination of the deficiency of income tax for 1976.

4. For the years 1973, 1974, 1975 and 1976, petitioners filed income tax returns as United States citizens residing in Canada with the Internal Revenue Service, and with Canadian and New York income tax authorities.

5. In 1972, petitioner Thomas A. McLaren was elected president of General Motors Acceptance Corporation of Canada, Ltd. ("GMAC Canada"). He had been born in Canada. After service in the United States army during which he became a naturalized United States citizen, petitioner Thomas A. McLaren returned to and graduated from Queens University in Kingston, Province of Ontario, Canada.

6. Correspondence in 1972 between General Motors Acceptance Corporation ("GMAC United States") and the Canadian Immigration Office indicates that on the representation by GMAC United States that petitioner Thomas A. McLaren's stay as chief executive officer of GMAC Canada would be of indefinite duration, the Department of Manpower and Immigration acknowledged receipt in 1972 of petitioners' application for permanent admission to Canada. As of March 5, 1973, petitioners and their daughter, Martha, were officially granted the status of "Landed Immigrants".

Social Insurance Cards were issued to each of the petitioners. Handguns owned by petitioner Thomas A. McLaren were registered with the Provincial Police Department.

7. On October 27, 1972, petitioners contracted to purchase a home in King City, Ontario, Canada for a consideration in excess of \$80,000.00 (Canadian). The house was a substantial California ranch with three bedrooms. There was a combined living room and dining room on the main floor; a two-car garage and breezeway; finished basement with playroom, family room, utility room and bath. A swimming pool was on the property.

Closing took place on January 10, 1973. The mortgage was renewed on August 1, 1974.

Petitioners and their daughter, Martha, moved into the King City house immediately after closing of title. All the furniture that had been in their Katonah, New York home was moved into the King City residence. The family's personal possessions were moved into the new house. Petitioners registered the family automobiles in Ontario, Canada.

9. On April 21, 1973 petitioners leased the Katonah, New York house unfurnished for a period of twenty-seven months to June 30, 1975. Then the house was leased to a different family, the term to expire November 1, 1976. The tenant eventually came to a settlement with petitioners to move out of the Katonah house about October 1, 1976. Petitioners' checks for the settlement show a notation that they were for return of initial rent deposit and for fuel oil left by the tenant.

10. Petitioner Thomas A. McLaren, who had long been an executive with GMAC United States, was successively elected president of GMAC Canada in September, 1972 effective October 1, 1972, and in April of each year for the succeeding May 1 in 1973, 1974 and 1975. He was reelected in April, 1976, but submitted his resignation effective May 1, 1976. Petitioner never had a written contract, but GMAC Canada benefits were designated on a personnel form exhibited at the hearing.

11. Petitioner Thomas A. McLaren had been offered a position of vice-president of GMAC United States in March, 1976. He accepted it, effective May 1, 1976, and began to work out of GMAC New York City offices. He commuted week-ends to be with his family who remained in King City, Ontario until sale of the house there on August 31, 1976.

12. One of the representations made by petitioners in the contract as sellers of their King City, Ontario house was that they were not nonresidents of Canada.

13. Petitioners purchased and registered Canadian Chevrolet station wagons in Ontario, Canada in 1974, 1975 and 1976. They opened checking and savings accounts in the main branch of the Royal Bank of Canada in Toronto. They maintained a checking account and savings account in Katonah, New York during their residence in Canada from 1972 to 1976. Petitioner Thomas A. McLaren became a member of the Board of Trade of Metropolitan Toronto, Canada Society and Ontario Fish and Game Club. He had his Campfire Club membership in the United States transferred to "nonresident" status. He obtained a nonresident hunting and fishing license for New York State in each of the years 1973, 1974 and 1975.

14. Petitioners placed their household furniture and furnishings from the King City house in storage in Oshawa, Ontario from September 1, 1976 until October 15, 1976. Their daughter had married a Canadian and moved into her own home. Petitioners stayed with relatives in and near Katonah, New York from September 1, 1976 to October 15, 1976 when they moved back into the 11 Barrett Road, Katonah, New York residence they had built in 1958. Petitioners registered and voted in New York in the 1976 elections. They had not voted in New York in 1973, 1974 or 1975.

15. Petitioner Thomas A. McLaren, according to his testimony, spent eighty-one days in New York State in the period from January 1, 1976 through August 31, 1976.

16. During the period from May 1, 1976 when petitioner Thomas A. McLaren became vice-president of GMAC United States and began to work in the New York



City GMAC offices and October 15, 1976 when petitioners moved back into their Katonah, New York home, petitioners considered relocating in Connecticut, New Jersey or Michigan for employment and income tax considerations.

17. Petitioners concluded the sale of their jointly owned house in Canada on August 31, 1976, and at that time realized a capital gain.

18. Petitioners' United States income tax return for 1976 was not introduced into evidence. An attachment to the Notice of Deficiency dated March 8, 1978 shows computation of income tax due based on the Audit Division's determination that since petitioners were deemed residents for tax purposes, all of their 1976 income was subject to New York income tax. Although petitioners had filed resident and nonresident income tax returns for 1976 claiming the standard deduction on each, the recomputation of income tax indicated an amount of itemized deductions and modifications. No evidence of the source of the figures was introduced at the hearing. New York City personal income tax was computed to be \$121.00 and withholding tax credited of \$119.00, resulting in tax due of \$2.00. Nevertheless, the notice indicated additional tax due of \$200.00.

#### 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 NYS2d 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 NYS2d 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 NY 238; Matter of Bodfish v. Gallman, 50 AD2d 457).

B. That petitioners Thomas A. McLaren and Helen T. McLaren were domiciled in New York prior to their move to Canada in 1972 and have failed to sustain the burden of proof required to show that they changed domicile to Canada. Accordingly, petitioners were domiciled in New York during the period they resided in Canada.

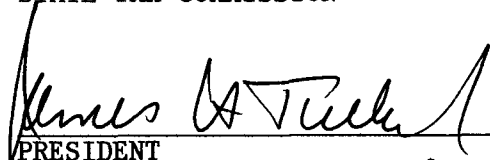
C. That petitioners, domiciled in New York State, are taxable as residents of New York State for 1976 in accordance with section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b), since (1) they maintained a permanent place of abode in New York State, (2) they did not maintain a permanent place of abode 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 1976.

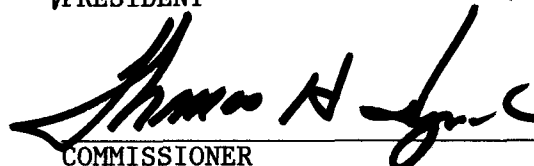
D. That the Audit Division is directed to modify the Notice of Deficiency issued March 8, 1978 to reduce the New York City personal income tax due to the correct amount of \$2.00. The Notice of Deficiency as modified is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER