

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter J. & Marlyn Palmeri :
: 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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Peter J. & Marlyn Palmeri, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter J. & Marlyn Palmeri
16 18th St.
Buffalo, NY 14213

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
3rd day of April, 1981.

Conni A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter J. & Marlyn Palmeri :
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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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Richard L. Campbell 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. Richard L. Campbell
10490 Main St.
Clarence, NY 14031

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
3rd day of April, 1981.

Annice A. Hagelund

J. Vredenburg

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

April 3, 1981

Peter J. & Marlyn Palmeri
16 18th St.
Buffalo, NY 14213

Dear Mr. & Mrs. Palmeri:

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
Richard L. Campbell
10490 Main St.
Clarence, NY 14031
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PETER J. PALMERI and MARLYN PALMERI : 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, Peter J. Palmeri and Marlyn Palmeri, 16 Eighteenth Street, Buffalo, New York 14213, 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. 25854).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, 1 West Genesee Street, Buffalo, New York, on September 30, 1980 at 9:15 A.M. Petitioner Peter J. Palmeri appeared with Richard L. Campbell and Dwight Saunders, Esqs. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners were residents and domiciliaries of New York State for the entire year of 1975.

FINDINGS OF FACT

1. Petitioners filed a timely New York State Resident Income Tax Return for the year 1975. On said return, they excluded income earned outside New York State.

2. On March 8, 1979, the Audit Division issued a Notice of Deficiency to petitioners, imposing additional personal income tax of \$1,004.34, plus interest of \$246.98, for a total due of \$1,251.32. The Notice was issued on the grounds that the petitioners did not relinquish their domicile in New York State; therefore, as residents, all income regardless of where earned is taxable.

3. Petitioner Peter Palmeri is in the construction industry supervising heavy erection construction for Bethlehem Steel Corporation. Petitioner is employed out of the Leetsdale, Pennsylvania office and has moved from one job to the next from 1964 until February, 1977 when Fabricated Steel Construction Division of Bethlehem Steel Corporation was closed down. According to the records of Bethlehem Steel Corporation, petitioner's employment record was as follows:

<u>Location of Employment</u>	<u>Dates of Employment</u>
Lackawanna, NY	9-10-73 to 1-04-74
Cleveland, OH	1-07-74 to 3-29-74
Lackawanna, NY	4-01-74 to 5-17-74
Cleveland, OH	5-20-74 to 4-21-75
Lackawanna, NY	4-22-75 to 6-23-75
Johnstown, PA	6-25-75 to 7-03-75
Lackawanna, NY	7-03-75 to 7-11-75
Cleveland, OH	7-14-75 to 10-17-75
Lackawanna, NY	10-20-75 to 2-06-76
Dayton, OH	2-09-76 to 4-30-76
Shippingport, PA	5-03-76 to 6-11-76
Lackawanna, NY	6-14-76 to 6-23-76
Shippingport, PA	6-24-76 to 2-28-77

Upon completion of a job assignment, petitioners knew they would be moving on to a new location.

4. Prior to petitioners' moving to Cleveland, Ohio in May, 1974, petitioners resided and were domiciled in an apartment of a two-family house owned by petitioner Peter Palmeri's mother. In May 1974, petitioners moved their belongings to an apartment in Cleveland, Ohio, which they leased until

October 1975. Petitioners contended their intent was to become residents of the State of Ohio at the time they moved to Cleveland. Petitioners contended that they abandoned their apartment in New York. Petitioner Peter Palmeri's mother did not rent the apartment and upon returning to New York in October 1975, petitioners reoccupied their old apartment.

5. During the time petitioners were living in Ohio, petitioners maintained their New York drivers licenses and used petitioner Peter Palmeri mother's address as a mailing address. Petitioners' daughter lived with Peter Palmeri's mother during this time as she was attending a private school in Buffalo. Petitioners also used their old apartment in Buffalo when petitioner Peter Palmeri was on temporary assignment in the Buffalo area.

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). No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home [20 NYCRR 102.2(d)(2)]. 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 to establish required intention to effect a change in domicile must be clear and convincing.

That in this instant case, it was customary during the time at issue for petitioners to move from one location to the next since petitioner Peter Palmeri's employment was composed of a series of assignments, the duration of which depended upon the size of the project. Thus, petitioners' decision to

become residents of Cleveland, Ohio was related to Mr. Palmeri's employment: that the petitioners have failed to sustain the burden of proof in accordance with section 689(e) of the Tax Law to show that they intended to remain in Cleveland, Ohio permanently. Therefore, the petitioners' domicile remains in New York.

B. That since petitioners were domiciliaries of New York during 1975 and spent more than thirty days in New York State during said year, they were, therefore, resident individuals in accordance with section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b) and as such all income regardless of where earned is taxable.

C. That the petition of Peter J. Palmeri and Marlyn Palmeri is denied and the Notice of Deficiency issued on March 8, 1979 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

APR 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER