

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Herbert & Ruth Rosenberg :
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. :

AFFIDAVIT OF MAILING

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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Herbert & Ruth Rosenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert & Ruth Rosenberg
Fiat 4A 6-8 Conduit Rd.
Hong Kong, BCC

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
9th day of October, 1981.

Carrie A. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Herbert & Ruth Rosenberg :
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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Sidney Podber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney Podber
Helfat & Gross
200 Madison Ave.
New York, NY 10016

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
9th day of October, 1981.

Connie A. Haglund

J. Vredenburg

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

October 9, 1981

Herbert & Ruth Rosenberg
Fiat 4A 6-8 Conduit Rd.
Hong Kong, BCC

Dear Mr. & Mrs. Rosenberg:

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
Sidney Podber
Helfat & Gross
200 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HERBERT ROSENBERG and RUTH ROSENBERG	:	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, Herbert Rosenberg and Ruth Rosenberg, Flat 4A 6-8 Conduit Road, Hong Kong, BCC, 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. 21540).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1981 at 2:45 P.M. Petitioners Herbert Rosenberg and Ruth Rosenberg appeared by Sidney Podber, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York to Hong Kong on August 23, 1974.

FINDINGS OF FACT

1. On August 25, 1975 the Audit Division received a New York State Combined Income Tax Return from petitioners Herbert Rosenberg and Ruth Rosenberg for the period January 1, 1974 to August 23, 1974, which they indicated was their period of New York residence.

2. On February 27, 1978 the Audit Division issued a Notice of Deficiency for \$1,038.58 plus interest, along with an explanatory Statement of Audit Changes on which petitioners were found to be residents of New York State for the entire year 1974. In addition, a 20 percent capital gain modification was imposed in accordance with section 612(b)(11) of the Tax Law. At the small claims hearing of February 24, 1981 the Audit Division asserted a greater deficiency, which increased the deficiency from \$1,038.58 to \$1,209.04, plus interest. An explanation and a detailed computation of the greater deficiency was examined by petitioner's representative Sidney Podber, C.P.A. and was not challenged.

3. Petitioners Herbert Rosenberg and Ruth Rosenberg contended that they left New York State on August 23, 1974 and established a new domicile in Hong Kong. No documentary evidence, and/or sworn testimony was submitted supporting their contentions or establishing the facts surrounding their alleged change of domicile.

CONCLUSIONS OF LAW

A. That petitioners Herbert Rosenberg and Ruth Rosenberg have failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing a change of domicile from New York State to Hong Kong on August 23, 1974.

B. That petitioners Herbert Rosenberg and Ruth Rosenberg were residents of New York State for the entire year 1974 within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That the petition of Herbert Rosenberg and Ruth Rosenberg is denied and the increased Notice of Deficiency of \$1,209.04 for the year 1974 is sustained together with such interest as may be lawfully owing.

DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER