

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
G. Frank & Carol Shofner

:

:

: 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 6th day of November, 1981, he served the within notice of Decision by certified mail upon G. Frank & Carol Shofner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

G. Frank & Carol Shofner
62 W. Orchard Rd.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of November, 1981.

Annice A. Hageland

J. Vredenburg

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

November 6, 1981

G. Frank & Carol Shofner
62 W. Orchard Rd.
Chappaqua, NY 10514

Dear Mr. & Mrs. Shofner:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
G. FRANK and CAROL SHOFNER	:	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, G. Frank and Carol Shofner, 62 West Orchard Road, Chappaqua, New York 10514, 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. 24164).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 29, 1981 at 1:15 P.M. Petitioners appeared by G. Frank Shofner. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State at the time of their move to Venezuela on February 21, 1975.

FINDINGS OF FACT

1. Petitioners, G. Frank and Carol Shofner, filed a joint New York State Income Tax Resident Return for 1975 on which they indicated a New York period of residence from January 1 to February 20, 1975. They allocated income, deductions and exemptions based on said period of residence.

2. On April 13, 1978 the Audit Division issued a Statement of Audit Changes to petitioners stating that petitioners were domiciled in New York and

did not change domicile and that all income reported on their Federal income tax return was deemed to be taxable to New York State.

3. On June 29, 1978 the Audit Division issued a Notice of Deficiency, based on the Statement of Audit Changes, imposing additional tax of \$7,003.50 and interest of \$1,311.27. Petitioners timely filed a petition for redetermination of said Notice of Deficiency.

4. Petitioners were born and raised in the State of Texas. They were educated and married in the State of Texas and resided there until 1955. In 1955 they moved to Arizona in order that Mr. Shofner could attend the American Graduate School of International Management. In 1956, while still enrolled at said school, Mr. Shofner was offered a job with the First National City Bank of New York (now known as Citibank, N.A. and referred to herein as "the bank"). Mr. Shofner accepted the job and in 1956 moved to Montclair, New Jersey. He began training with the bank in New York City. Mr. Shofner was hired as "career international staff."

5. In October 1957, Mr. Shofner was assigned to Caracas, Venezuela by the bank. Petitioners moved there and continued to live in Venezuela until 1965, at which time Mr. Shofner was transferred to the Dominican Republic. Petitioners then moved to the Dominican Republic and lived there until mid 1969 when Mr. Shofner was transferred back to New York for further training. At that time, petitioners purchased a house in Chappaqua, New York.

6. In December 1970, Mr. Shofner was transferred to the Netherlands for a short-term assignment and returned to the United States in January 1972. Petitioners had rented out the Chappaqua house to another employee of the bank while they lived in the Netherlands.

7. From January 1972 until February 1975 Mr. Shofner worked out of the bank's New York City offices and petitioners resided in their house in Chappaqua. While they lived in Chappaqua, petitioners voted there and their children went to school there and petitioners had New York State drivers' licenses.

8. In February 1975, Mr. Shofner was transferred back to Venezuela. At that time, petitioners sold their house in Chappaqua, sold their car, placed one daughter in school in Vermont and took the other daughter with them to Venezuela and enrolled her in school there. They left for Venezuela on February 21, 1975.

9. Mr. Shofner's home city has been registered with the bank as "Nacogdoches, Texas". It is the policy of the bank that when international staff members take their furloughs, the bank pays their round trip transportation from the post of foreign assignment to their home city.

10. Petitioners have a joint will, drawn under the laws of Texas dated October 31, 1962. The will recites petitioners' domicile as follows: "...of the State of Texas, County of Nacogdoches, temporarily sojourning in Valencia, Venezuela...".

11. For many years prior to 1975 and during 1975 petitioners maintained a safe deposit box in a bank in Nacogdoches, Texas, containing their will and other personal documents. At no time did they maintain a safe deposit box in New York.

12. In 1975 Mr. Shofner acquired a farm in Texas and intends to live on the farm when he retires.

13. After leaving New York in February 1975, Mr. Shofner served the bank in Venezuela and in American Samoa and returned to New York in 1977. At that time petitioner purchased another house in Chappaqua, New York.

14. During Mr. Shofner's career with the bank, petitioners have returned to Texas for vacations almost annually. Their families reside in Texas.

15. Petitioners maintain a bank account in Texas.

16. Petitioners paid income taxes to Venezuela when they resided there and have had international drivers' licenses in at least four countries.

17. Petitioners have not voted in Texas since the 1950's.

18. Petitioners do not own a cemetery plot.

CONCLUSIONS OF LAW

A. That petitioners, G. Frank and Carol Shofner, remained domiciliaries of Texas and were never domiciled in New York. Although owning a home and voting in New York State are indications of New York domicile, such considerations are more than countered by the transient nature of Mr. Shofner's employment, the petitioners' retained contacts with their home state of Texas and their intention to return there in the future. Petitioners' physical presence in New York did not amount to acquiring a New York domicile, since petitioners lacked the requisite intent to make New York their permanent home, with the necessary degree of sentiment, feeling, and permanent association with it. Shapiro v. State Tax Commissioner, 67 A.D.2d 191, 415 N.Y.S.2d 282, (1979), Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645, (1975), Matter of Bourne, 181 Misc. 238, 41 N.Y.S.2d 336, aff'd 293 N.Y. 785, (1943). Residence without such intention will not effect a change in domicile, regardless of the duration of absence from the existing domicile. Matter of Newcomb, 192 N.Y. 238 (1908), In re Chrisman's Will, 43 A.D.2d 771, 350 N.Y.S.2d 468 (1974), Matter of Marshall, 57 Misc.2d 419, 292 N.Y.S.2d 973 (1968). That petitioners had no fixed and absolute intention to abandon Texas as their domicile is evidenced by acquisition of the farm and their intention to return there in the future. Existing

domicile continues until a new one is clearly established. Matter of Newcomb, supra., Reese v. Reese, 179 Misc. 665, 40 N.Y.S.2d 468 (1943), In re Sumner's Estate, 102 N.Y.S.2d 478 (1951).

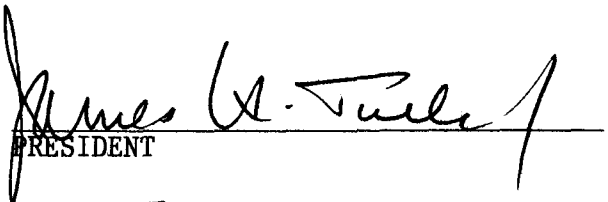
B. That petitioners were nonresident individuals of New York State after February 20, 1975 within the meaning of section 605(b) of the Tax Law and were entitled to allocate their income between the period of residence and the period of nonresidence under section 654 of the Tax Law.

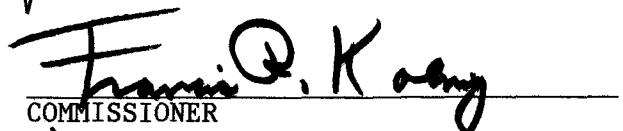
C. That the petition of G. Frank and Carol Shofner is granted and the Notice of Deficiency is cancelled.

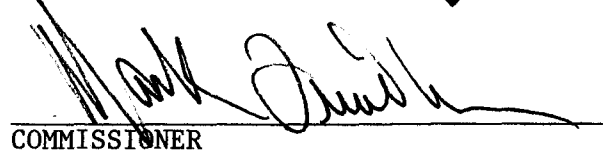
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER