

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James R. & Marie S. Wiggins :

: 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 17th day of July, 1981, he served the within notice of Decision by certified mail upon James R. & Marie S. Wiggins the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James R. & Marie S. Wiggins
Apartado
Aereo 12316
Bogota, D.E., COLUMBIA

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
17th day of July, 1981.

Cammie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Arthur M. Hayes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur M. Hayes
Ernst & Ernst
Citicorp Center, 153 E. 53rd St.
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 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
17th day of July, 1981.

Connie A. Hayeslund

J. Vredenburg

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

July 17, 1981

James R. & Marie S. Wiggins
Apartado
Aereo 12316
Bogota, D.E., COLUMBIA

Dear Mr. & Mrs. Wiggins:

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
Arthur M. Hayes
Ernst & Ernst
Citicorp Center, 153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES R. WIGGINS and MARIE S. WIGGINS	:	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, James R. Wiggins and Marie S. Wiggins, Apartado Aereo 12316, Bogota, D.E. Columbia, 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. 18873).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 25, 1979 at 1:15 P.M. Petitioners appeared by Arthur M. Hayes, Jr., CPA, of the accounting firm of Ernst & Ernst. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the petitioners were residents of New York State for income tax purposes in the year 1974.

FINDINGS OF FACT

1. Petitioners, James R. Wiggins and Marie S. Wiggins, timely filed a New York State Income Tax Nonresident Return for 1974 in which they stated that the period of their New York State residence was from January 1, 1974 to August 30, 1974.

2. On December 20, 1976, the Audit Division issued a Statement of Audit Changes against petitioners, asserting that additional personal income tax and

interest was due for 1974 on the stated ground that "as you are domiciled in New York you are taxable on income from all sources to the extent reported on your Federal return."

Accordingly, on December 20, 1976, a Notice of Deficiency was issued against the petitioners asserting personal income tax due for 1974 of \$3,546.76, plus interest of \$469.69, less an overpayment on return of \$262.00, for a net amount due of \$3,754.45.

3. Both of the petitioners were born in the State of Ohio, were married to each other in the State of Ohio and, except for a period of military service of petitioner James R. Wiggins, both of the petitioners lived continuously in the State of Ohio until September 1, 1968.

4. Petitioner James R. Wiggins became an employee of the international accounting firm of Ernst & Ernst on July 5, 1960 in its Dayton, Ohio office and continued to serve in the employ of Ernst & Ernst in its Dayton, Ohio office until September 1, 1968 when he was transferred to its Buffalo, New York office at the request of said employer.

5. At the time of the said transfer of the petitioner James R. Wiggins to the Buffalo, New York office of Ernst & Ernst, the said petitioner sold his home in Dayton, Ohio and purchased a home in the town of Williamsville, New York, located on the outskirts of Buffalo, New York.

6. Petitioner James R. Wiggins and his wife, the petitioner Marie S. Wiggins, together with their children, lived in the said home in Williamsville, New York from September 1, 1968 until August 30, 1974.

7. Petitioner remained in the Buffalo, New York office of Ernst & Ernst from September 1, 1968 to August 30, 1974, when he was transferred, at his request, to the office of Ernst & Ernst located in Caracas, Venezuela as manager of that office.

8. At or about the time that the petitioner James R. Wiggins was transferred to Caracas, Venezuela, as aforesaid, he sold his aforesaid home located in Williamsville, New York and moved to Caracas, Venezuela with his said wife, the petitioner Marie S. Wiggins and their children.

The petitioner James R. Wiggins served in the employ of Ernst & Ernst in its said office in Caracas, Venezuela from September 1, 1974 to the latter part of August, 1977 or the early part of September, 1977 and, during said period, lived in Caracas, Venezuela with his said wife, petitioner Marie S. Wiggins, and their children.

9. In or about September, 1977, petitioner James R. Wiggins became a partner in the said accounting firm of Ernst & Ernst and was placed in charge of the office of said firm located in Bogota, Columbia. Since then, the petitioners and their children have lived in Bogota, Columbia.

10. During the aforesaid period while petitioner James R. Wiggins was assigned to the office of Ernst & Ernst in Buffalo, New York, the petitioners had one or more New York State certificates of registration for an automobile and New York State driver's licenses, made charitable contributions to New York non-profit organizations, maintained bank accounts in New York State which were continued for approximately two years while the petitioners were in Caracas, Venezuela as aforesaid, and during the time petitioners lived in Buffalo, their children attended schools in New York State.

11. Since leaving New York State for South America as aforesaid, the petitioners have spent their vacations in the State of Ohio during 1975, 1976, 1977, 1978 and 1979, returning to New York City for business reasons only because that is the location of the international headquarters of Ernst & Ernst.

The petitioners have "reobtained" Ohio driver's licenses and petitioner James R. Wiggins transferred his New York State bank accounts aforesaid from Buffalo, New York to Columbus, Ohio where his parents live so that "they can handle the accounts for him while he is in South America."

12. It was the petitioners' intention that ultimately they would return to the State of Ohio rather than to New York State.

CONCLUSIONS OF LAW

A. That during 1968, the petitioners, James R. Wiggins and Marie S. Wiggins, established a domicile in New York State within the meaning and intent of 20 NYCRR 102.2(d).

B. 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. 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)].

C. That 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 that 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 that he intends to remain abroad permanently and not to return [20 NYCRR 102.2(d)(3)].

Further, in determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct [20 NYCRR 102.2(d)(2)].

D. That 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 238,250). Petitioners may have left New York State with no intention of returning; however, they failed to show that they went to Caracas, Venezuela intending to remain there permanently or establish a domicile there. Accordingly, petitioners remained domiciled in New York State within the meaning and intent of 20 NYCRR 102.2(d).

E. That although it was the petitioners' intention to ultimately return to the state of Ohio rather than New York, "to change one's domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residency in the new locality" (Matter of Newcomb, supra., 250-251).

Accordingly, no change of domicile from New York to Ohio occurred as "the existing domicile, whether of origin or selection, continues until a new one is acquired and the burden of proof rests upon the party who alleges a change." (Matter of Newcomb, supra., p. 250).

F. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfied all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such year and (3) he spends in the aggregate not more than 30 days of the taxable year in this state [20 NYCRR 102.2(b)].

Since petitioners herein did not satisfy these requirements, they are deemed to have been full year residents of New York State.

G. That the petition of James R. Wiggins and Marie S. Wiggins is denied and the Notice of Deficiency issued December 20, 1976 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUL 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER