

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Geraldine A. Ballerano :  
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. :  
\_\_\_\_\_

State of New York  
County of Albany

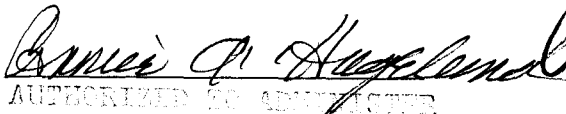
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Geraldine A. Ballerano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Geraldine A. Ballerano  
U107 Stedwick Dr.  
Budd Lake, NJ

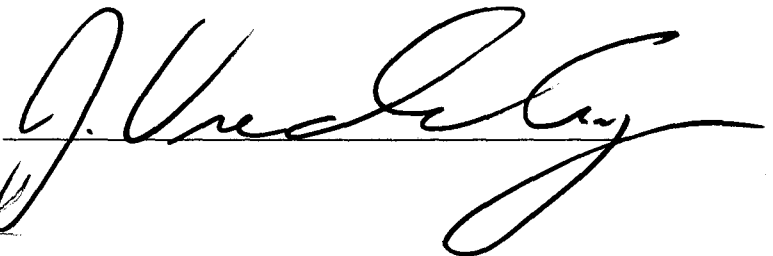
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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AFFIDAVIT OF MAILING  
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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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Donald F. Van Cook the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald F. Van Cook  
2035 Deer Park Ave.  
Deer Park, NY 11729

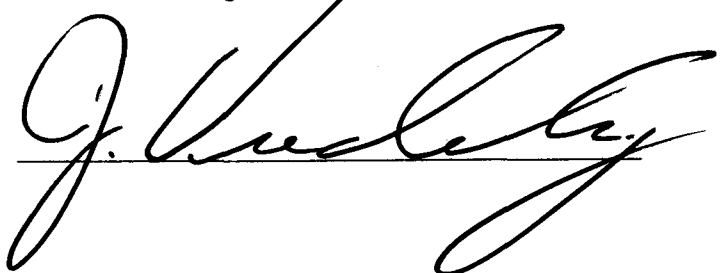
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
6th day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
§ 7-112 (a)



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

October 6, 1982

Geraldine A. Ballerano  
U107 Stedwick Dr.  
Budd Lake, NJ

Dear Ms. Ballerano:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Donald F. Van Cook  
2035 Deer Park Ave.  
Deer Park, NY 11729  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
GERALDINE A. BALLERANO  
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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DECISION

Petitioner, Geraldine A. Ballerano, U107 Stedwick Drive, Budd Lake, New Jersey, 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. 29437).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 18, 1981 at 9:00 A.M. Petitioner Geraldine A. Ballerano appeared with Donald F. Van Cook, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Geraldine A. Ballerano, was domiciled in and a resident of the State of New York during the entire year 1976.

FINDINGS OF FACT

1. Petitioner Geraldine A. Ballerano filed a New York State Income Tax Resident Return for 1976. Attached thereto was a Schedule for Change of Resident Status on which petitioner indicated her period of New York State residence was from January 1, 1976 to May 2, 1976, and, from October 27 to December 31, 1976.

2. On April 14, 1980, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax of \$547.53, plus interest of \$253.33, for a total of \$800.86. The Notice was issued on the grounds that petitioner's total income was subject to New York State personal income tax as a domiciliary thereof as she failed to fulfill all three of the following requirements:

1. Maintained no permanent place of abode in the State during the taxable year.
2. Did maintain a permanent place of abode outside the State during the entire taxable year, and
3. Was in the State for an aggregate period of not more than 30 days during such year.

3. At the hearing, petitioner agreed that if she is found to be domiciled in New York State, then interest earned on her savings accounts would be subject to New York State personal income tax for 1976.

4. Petitioner was employed by Sunmark Industries (hereinafter "company") for subject year. In February, 1976, the company promoted petitioner and transferred her to its New Jersey office effective March, 1976.

Petitioner contends that the promotion required that she leave her parents' home in New York State where she resided and seek new accommodations in New Jersey. She stayed in various motels during parts of March and April 1976.

5. On May 1, 1976, petitioner leased an apartment in New Jersey and furnished it with belongings taken from her parents' home.

6. On November 1, 1976, petitioner terminated her lease and returned to her parents' home as a result of her reassignment to New York by the company.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain the burden of proof imposed under section 689(e) of the Tax Law to establish that her move to New Jersey was made with a bona fide intention of making her fixed and permanent home there. That a domicile once established continues until the person in question moves to a new location with a 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)).

B. That petitioner was a domiciliary of New York State for 1976, and failed to satisfy all three of the criteria set forth in section 605(a)(1) of the Tax Law, which would have enabled her to be treated as a nonresident although domiciled in New York. Accordingly, she is a New York State resident for 1976 within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(a).

C. That the petition of Geraldine A. Ballerano is denied; and that the Notice of Deficiency dated April 14, 1980, is sustained, together with any additional interest legally owing.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER