

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Tsvi & Nava Barak

:

: 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 :
1972.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Tsvi & Nava Barak, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tsvi & Nava Barak
43-10 Kissena Blvd.
Flushing, NY 11355

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
29th day of January, 1982.

James P. Haglund

J. Vredenburg

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

January 29, 1982

Tsvi & Nava Barak
43-10 Kissena Blvd.
Flushing, NY 11355

Dear Mr. & Mrs. Barak:

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	:	
	:	
TSVI and NAVA BARAK	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Tsvi and Nava Barak, residing at 41-10 Kissena Boulevard, Flushing, New York 11355, 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 1972 (File No. 10937).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1977 at 1:45 P.M. Petitioner Nava Barak appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

- I. Whether a wife who is not legally separated may acquire a domicile of her own.
- II. Whether petitioner Nava Barak was a non-domiciliary of New York State in 1972.
- III. Whether petitioner Nava Barak was a nonresident during the year in issue.

FINDINGS OF FACT

1. Tsvi and Nava Barak filed joint Federal and New York State income tax resident returns for the year 1972. Only the income of Tsvi Barak was included.

2. On November 24, 1975, the Audit Division issued a Statement of Audit Changes against Tsvi Barak and Nava Barak, his wife, which stated:

"A wife's domicile generally follows that of her husband. On the basis of information submitted, it appears the wife did not maintain a residence outside New York State for the entire tax year and is being considered a domiciliary of New York State. The tax liability has been recomputed as shown.

Recomputation

Total Federal adjusted gross income	\$60,184.99
Deductions	<u>4,651.76</u>
Balance	\$55,533.23
Exemptions	<u>2,600.00</u>
Corrected taxable income	\$52,933.23

Tax on income	\$6,249.98
Tax surcharge	<u>156.25</u>
Total tax due	\$6,406.23
Tax previously stated	<u>254.61</u>
Personal Income Tax Due	

	\$6,151.62
Interest	<u>1,204.61</u>
Total	\$7,356.23"

Accordingly, a Notice of Deficiency was issued against Tsvi and Nava Barak on November 24, 1975 for \$7,356.23. Petitioners timely filed a petition with respect to said Notice of Deficiency.

3. On their joint New York 1972 return Mr. and Mrs. Barak indicated they were married. An exemption for Mrs. Barak was included on said return.

4. Prior to April, 1971, Tsvi and Nava Barak were married and living in a co-operative apartment at 43-10 Kissena Boulevard, Flushing, New York, with their two children, aged 8 and 6. In April, 1971, petitioner Nava Barak decided to live separate and apart from her husband. They were not legally separated. Petitioner removed her personal belongings and clothes from the co-operative apartment. The children remained with the husband.

5. Prior to and subsequent to April, 1971, petitioner Nava Barak was co-owner of the co-operative apartment and she had the legal right to return to said apartment.

6. In August, 1971, petitioner Nava Barak obtained a permanent job in Stamford, Connecticut, as sales manager for Holiday Magic, Inc., a cosmetics distributor. She leased an apartment in Stamford, Connecticut effective October 1, 1971, and purchased furniture and furnishings to equip said apartment, intending to remain there permanently. From October, 1972 through April, 1973, after having been promoted to regional vice-president, petitioner Nava Barak resided in a hotel in Dallas, Texas.

7. Petitioner Nava Barak submitted various hotel receipts and cancelled checks for the period April 14, 1971 through September 29, 1971 and for the period October, 1971 through September, 1972. These were submitted to substantiate that she moved from the co-operative apartment, that she moved to Stamford, Connecticut and that she traveled extensively during these periods. The cancelled checks for 1971 were drawn on the Franklin National Bank, Flushing, New York, and her address printed on the checks was 43-10 Kissena Boulevard, Flushing, New York. The cancelled checks for 1972 were drawn on The County Trust Company, Larchmont, New York, and her address printed on these checks was 43-10 Kissena Boulevard, Flushing, New York. All hotel receipts for 1971 and 1972 which included an address, showed Mrs. Barak's address as 43-10 Kissena Boulevard, Flushing, New York. Hotel receipts and airline tickets were submitted for the period October, 1972 to December, 1972 to substantiate Mr. Barak's move to Texas and her travels during this period. The hotel receipts for this period which included an address also showed her address as Flushing, New York.

8. Petitioner Nava Barak and her husband were reconciled in May, 1973 when she quit her job and came back to New York.

9. Petitioner Nava Barak did not spend more than 183 days in New York in 1972.

CONCLUSIONS OF LAW

A. That a domicile is the place which an individual intends to be his permanent home and the place to which he intends to return whenever he may be absent. [20 NYCRR 102.2(d)(1)]. 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. The burden is upon any person asserting a change of domicile to show that the necessary intentions existed. [20 NYCRR 102.2(d)(2)]. The evidence must be clear and convincing to establish required intention to effect a change in domicile (Matter of Newcomb, 192 N.Y. 238).

B. That ordinarily a wife's domicile follows that of her husband, but if they are separated in fact she may under some circumstances acquire her own separate domicile even though there is no judgment or decree of separation. [20 NYCRR 102(d)(5)] In this case the facts show that petitioner Nava Barak was in fact separated from her husband. However, the evidence submitted in this case was not of a clear, convincing nature to establish the required intention to effect a change in domicile.

C. That a permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. In the case of a person domiciled in New York, the maintenance of a permanent place of abode in this State is along sufficient to make him a resident for the entire year;

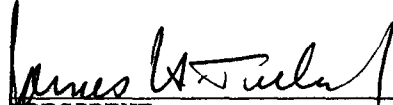
the 183-day rule applies only to taxpayers who are not domiciled in New York. [20 NYCRR 102.2(e)]. Petitioner Nava Barak was co-owner of the co-operative apartment in Flushing, New York. Therefore, she was a resident of New York State within the meaning and intent of section 605(a) of the Tax Law.


D. That the petition of Tsvi and Nava Barak is denied and the Notice of Deficiency dated November 25, 1975 is sustained.


DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


RESIDENT


COMMISSIONER

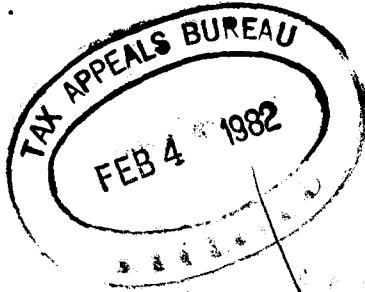

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

516 Main St
Long Island City
10044

WPK 23
~~Tsvi & Nava Barak
43-10 Kissena Blvd.
Flushing, NY 11355~~



Refused



PI
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Tsvi & Nava Barak
516 Main St.
Roosevelt Island, NY 10044

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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
26th day of March, 1982.

Conrad R. Hays

J. Vredenburg