

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Arthur A. Borsei
and Joyce B. Borsei

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
1973.

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Arthur A. Borsei and Joyce B. Borsei, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur A. Borsei
and Joyce B. Borsei
57 Memling Dreef
1900 Overijse, BELGIUM

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
8th day of September, 1982.

NOTARIAL TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur A. Borsei :
and Joyce B. Borsei : 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 :
1973. :

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Seymour Gillman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Gillman
1775 Broadway
New York, NY 10019

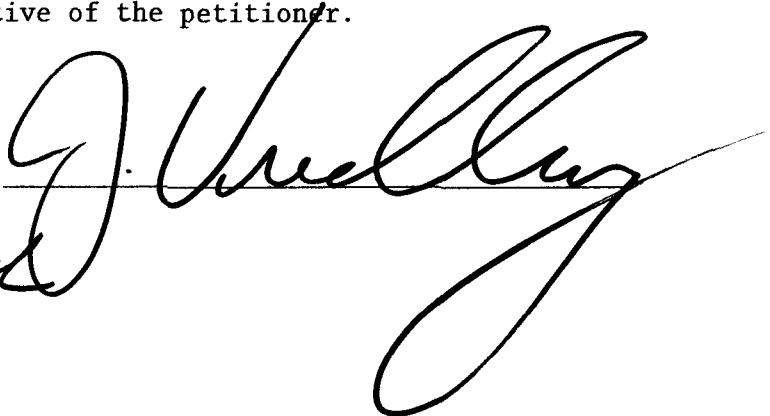
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
8th day of September, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 176



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

September 8, 1982

Arthur A. Borsei
and Joyce B. Borsei
57 Memling Dreef
1900 Overijse, BELGIUM

Dear Mr. & Mrs. Borsei:

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
Seymour Gillman
1775 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ARTHUR A. BORSEI and JOYCE B. BORSEI
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1973.

DECISION

Petitioners, Arthur A. Borsei and Joyce B. Borsei, 57 Memling Dreef, 1900 Overijse, Belgium, 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 1973 (File No. 22669).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1981 at 9:15 A.M. Petitioners appeared by Seymour Gillman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during 1973.

FINDINGS OF FACT

1. Petitioners, Arthur A. Borsei and Joyce B. Borsei, on September 2, 1976, filed a part-year New York State income tax resident return for 1973, on which they indicated their period of New York residence to be January 1, 1973 to July 17, 1973.

2. On May 22, 1978, the Audit Division issued a Statement of Audit Changes against petitioners, on the grounds that a United States citizen does not change his domicile by going to a foreign coutry unless he intends to

remain there permanently and never to return. As you are a domiciliary of New York State who was within the state for more than thirty days, no change of residence status is recognized for the year 1973; therefore, they were taxable as residents on their total income from all sources to the extent that such income was reported for Federal income tax purposes. On May 22, 1978, the Audit Division issued a Notice of Deficiency asserting additional personal income tax of \$1,713.50, plus interest of \$296.57, less an overpayment shown on the return of \$750.00, for a total due of \$1,260.07.

3. Petitioners Arthur A. Borsei and Joyce B. Borsei were domiciliaries and residents of the State of California for over fifteen years prior to 1970.

4. In the spring of 1970, petitioner Arthur A. Borsei, while in Paris, France on business for Data Products Corporation a California based corporation, met with the president of Henry Roussel and Co., Inc., a venture capital corporation with offices in New York, Paris and Geneva. Henry Roussel and Co., Inc. offered, and the petitioner Arthur A. Borsei accepted, employment as head of its Paris office. It was agreed that petitioner Arthur A. Borsei would first go to New York for a period of indoctrination, before moving to Paris.

In September 1970, petitioner Arthur A. Borsei left his job in California and rented a home in Scarsdale, New York for the period of his indoctrination.

5. During petitioner Arthur A. Borsei's indoctrination Henry Roussel and Co., Inc. made a substantial investment in a New Jersey corporation, International Teleprinter Corporation. When International Teleprinter Corporation needed more capital, and Henry Roussel and Co., Inc. had no desire to make a further investment, a buyer was sought. As the representative of Henry Roussel and Co., Inc. the petitioner remained in New York only to participate in the

negotiations and ultimately the sale of International Teleprinter Corporation in 1973 to the Singer Sewing Machine Co.

6. Because of the work done by petitioner in the sale of International Teleprinter Corporation, the Singer Sewing Machine Co. made the petitioner a very attractive offer to work for them in Brussels, Belgium which the petitioner accepted with the understanding and written agreement that if ever his service were terminated in Europe the company would pick up the actual cost of relocating his family and household goods from Brussels to Los Angeles, California. On July 17, 1973 the petitioners left the United States with their daughter and moved to Belgium.

7. In 1973, the petitioners filed and paid Belgium taxes on a non-resident return because they failed to satisfy one of the following requirements: (1) citizen of Belgium, (2) citizen of Common Market Country, (3) or having more assets in Belgium than elsewhere. The petitioners could not satisfy any of the requirements since they were citizens of the United States and still owned real estate in California with a value higher than the assets they had in Belgium. The petitioners had no property in New York State after July 17, 1973.

8. The petitioners entered Belgium in 1973 under a three year work permit which evolves into a permanent work permit after three years authorizing the petitioner to be employed in Belgium for an indefinite period of time.

9. The petitioner Arthur A. Borsei in 1977 left the employ of the Singer Sewing Machine Co. and secured other employment and is still living with his family and working in Belgium as of the date of this hearing.

CONCLUSIONS OF LAW

A. That the United States citizen can change his domicile instantly, for only two elements are necessary. He must take up residence at the new domicile

and he must intend to abandon his prior domicile and adopt the new place of residence as his fixed, true and permanent home to which he would have the intention of returning whenever absent (Berhalter v. Irmisch, 75 F.R.D. 539).

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)].

That in the instant case the petitioners' intentions prior to and during their period of residency in New York State was to remain there only for a limited time leads to the conclusion that the petitioners were domiciliaries of the State of California for the entire taxable year 1973.

B. That during the year at issue the petitioner did maintain a permanent place of abode in New York and spent in the aggregate more than one hundred eighty-three days of the taxable year in this state; therefore, the petitioners were residents of New York State for income tax purposes in 1973 in accordance with the meaning and intent of section 605(a)(2) of the Tax Law and 20 NYCRR 102.2(a)(2) even though they were not domiciled in New York. Accordingly all income received during the year is taxable to New York to the same extent as for Federal tax purposes.

C. That the petition of Arthur A. Borsei and Joyce B. Borsei is denied and the Notice of Deficiency issued May 22, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

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

September 8, 1982

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and Joyce B. Borsei
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Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Seymour Gillman
1775 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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That in the instant case the petitioners' intentions prior to and during their period of residency in New York State was to remain there only for a limited time leads to the conclusion that the petitioners were domiciliaries of the State of California for the entire taxable year 1973.

B. That during the year at issue the petitioner did maintain a permanent place of abode in New York and spent in the aggregate more than one hundred eighty-three days of the taxable year in this state; therefore, the petitioners were residents of New York State for income tax purposes in 1973 in accordance with the meaning and intent of section 605(a)(2) of the Tax Law and 20 NYCRR 102.2(a)(2) even though they were not domiciled in New York. Accordingly all income received during the year is taxable to New York to the same extent as for Federal tax purposes.

C. That the petition of Arthur A. Borsei and Joyce B. Borsei is denied and the Notice of Deficiency issued May 22, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

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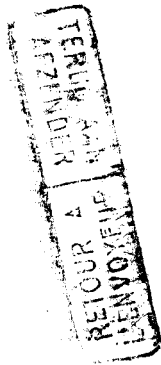
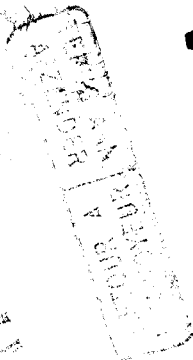
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS

ALBANY, N. Y. 12227

FOREIGN

MAIL

MAIL



A

Arthur A. Borsei
and Joyce B. Borsei
57 ~~Memling Dreef~~
~~1900 Overijse, BELGIUM~~

Foreign Mail
Via Air Mail

U.S.A.

AMOUNT NOT NEAR OF
ADDRESS ADDRESS
ADDRESSES