

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alexander H. & Gudrun M. Burgess : 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

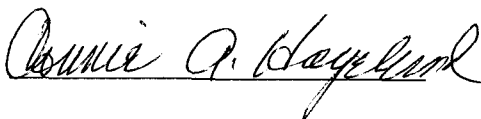
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of July, 1982, he served the within notice of Decision by certified mail upon Alexander H. & Gudrun M. Burgess, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

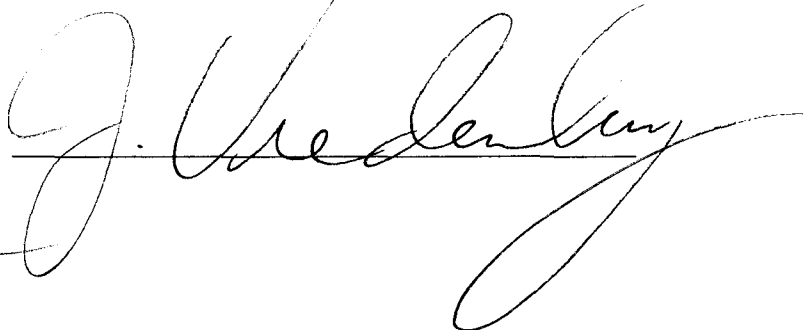
Alexander H. & Gudrun M. Burgess
c/o Robert J. McVay
217 Tilden Drive
East Syracuse, NY 13057

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
9th day of July, 1982.


Connie A. Hagedorn


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alexander H. & Gudrun M. Burgess : 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 :
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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 9th day of July, 1982, he served the within notice of Decision by certified mail upon Robert J. McVay the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert J. McVay
217 Tilden Dr.
E. Syracuse, NY 13057

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
9th day of July, 1982.

Connie A. Haglund

J. Vredenburg

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

July 9, 1982

Alexander H. & Gudrun M. Burgess
c/o Robert J. McVay
217 Tilden Drive
East Syracuse, NY 13057

Dear Messrs.:

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
Robert J. McVay
217 Tilden Dr.
E. Syracuse, NY 13057
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALEXANDER H. BURGESS AND GUDRUN M. BURGESS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1976.	:	

Petitioners Alexander H. Burgess and Gudrun M. Burgess, c/o Robert J. McVay, 217 Tilden Drive, East Syracuse, New York 13057, 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. 25298).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 18, 1981 at 1:15 P.M. Petitioners appeared by Robert J. McVay, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State, and if so, whether the petitioners are taxable to New York State on the same income reported for Federal income tax purposes.

FINDINGS OF FACT

1. Petitioners Alexander H. Burgess and Gudrun M. Burgess filed a part year New York State income tax resident return for 1976 on which they showed their period of New York State residency to be January 1, 1976 to August 30, 1976. On said return, petitioners excluded \$10,232.70 from their New York State total income. This return was received by the Department of Taxation and

Finance on March 30, 1978. Said return showed an address of 803 Fairway Circle, Baldwinsville, New York. The State wage and tax statement showed an address of 5100 Highbridge Street, Fayetteville, New York.

2. On January 2, 1979, the Audit Division issued a Notice of Deficiency against the petitioners imposing personal income tax due of \$746.79 plus interest for the year 1976 on the grounds that temporary removal from New York State for assignment by an employer to employment outside of the United States does not constitute a change of residence. The Audit Division held that the petitioners were taxable by New York State on the same income reported for Federal income tax purposes. In addition, pursuant to section 685(a)(1) and (2) of the Tax Law penalty was imposed for late filing.

3. Petitioner Alexander H. Burgess was employed by General Electric Company in Syracuse, New York, in August of 1976, at which time he accepted a work assignment from his employer on the island of Kwajalein which is part of the Ralik Chain in the western Pacific Ocean. Petitioners broke their lease in New York State and shipped their furniture to Kwajalein in 1976. Petitioners enrolled their child in school there and paid income taxes to Kwajalein in 1976.

4. Petitioners argued that rather than a "temporary removal from New York" their work history shows a "temporary stopover in New York" which is illustrated by the following chart.

<u>YEAR</u>	<u>COUNTRY OR STATE WORKED IN</u>		<u>NUMBER OF MONTHS WORKED IN N.Y. STATE</u>
1959	Spain		0
1960	Spain		0
1961	Spain	New York	3
1962	Germany	New York	1
1963-1972	Germany		0
1973	North Dakota	New York	1
1974	North Dakota	New York	11
1975	Alaska		0
1976	Kwajalein	New York	7
1977	Kwajalein	New York	2

Petitioners spent a total of twenty-five months during a period of nineteen years in New York State; therefore, petitioners argued that they did not intend to continue to be New York residents.

5. The petitioners' representative presented no information as to their domicile prior to 1959. Petitioners' representative had no idea as to their activities subsequent to 1976 nor did the representative know petitioners.

CONCLUSIONS OF LAW

A. 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. Temporary residence, even if of long duration, merely for the purpose of transacting business or engaging in employment is not sufficient for the acquisition or change of domicile; this rule applies even though the individual may have sold or disposed of his former home. Actual residence may not be required in order to retain domicile.

That in this instant case where petitioner spent little time in New York State over the years does not alter the fact that petitioners have failed to sustain their burden of proof imposed under section 689(e) of the Tax Law to show they were domiciled elsewhere prior to entering, while residing in and/or after leaving New York State.

B. That petitioners were domiciliaries of New York during 1976, maintained a permanent place of abode in New York from January 1, 1976 through August 30, 1976 and spent more than 30 days in New York State during said year; therefore, they were resident individuals for tax purposes for the entire year in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2 and as such all income regardless of where earned is taxable.


C. That the petition of Alexander H. Burgess and Gudrun M. Burgess is denied and the Notice of Deficiency issued on January 2, 1979 is sustained, together with such additional interest and penalty as may be legally owing.


DATED: Albany, New York

JUL 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER