

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Arthur H. Christ

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 Years
1973 & 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 26th day of February, 1982, he served the within notice of Decision by certified mail upon Arthur H. Christ, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur H. Christ
c/o 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 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 February, 1982.

Cornie A. Haglund

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur H. Christ :

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 Years :
1973 & 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 26th day of February, 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
26th day of February, 1982.

Cornie A. Haglund

Jay Vredenburg

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

February 26, 1982

Arthur H. Christ
c/o Robert J. McVay
217 Tilden Dr.
E. Syracuse, NY 13057

Dear Mr. Christ:

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
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	:	
ARTHUR H. CHRIST	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973 and 1974.	:	

Petitioner Arthur H. Christ, 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 years 1973 and 1974 (File No. 17687).

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 9, 1980 at 2:45 P.M. and continued on June 17, 1981 at 10:45. Petitioner appeared by Robert J. McVay, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a resident and domiciliary of New York State for the entire years of 1973 and 1974.

FINDINGS OF FACT

1. Petitioner Arthur H. Christ filed a New York State Resident Income Tax Return for 1973. On this return petitioner indicated that he was a New York State resident from January 1, 1973 to March 1, 1973. Petitioner subtracted \$24,644.35 from total Federal adjusted gross income of \$26,330.34 on the grounds that this income was earned after March 1, 1973 and therefore, was not subject to New York State tax.

2. Petitioner Arthur H. Christ filed a New York State Resident Income Tax Return for 1974. On this return the petitioner indicated that he was a New York State resident from January 1, 1974 to April 30, 1974. Petitioner subtracted \$21,949.75 from total Federal adjusted gross income of \$32,501.37, on the grounds that this income was earned after April 30, 1974, therefore, was not subject to New York State tax.

3. On November 22, 1976, the Audit Division issued a Statement of Audit Changes against petitioner, Arthur H. Christ imposing additional New York State personal income tax for 1973 and 1974 on the grounds that petitioner did not change his status as a New York resident. Accordingly, the Audit Division issued a Notice of Deficiency for \$1,607.76, plus interest of \$237.40, less overpayment on the 1974 return of \$239.00.

4. Petitioner was employed by General Electric's Field Service Department and began a new assignment at Shemya Alaska on December 14, 1972. He was a civilian employee working on a military installation. The petitioner lived in furnished government quarters for which neither he nor General Electric paid for. Petitioner went to Alaska with the express purpose of working there as long as General Electric had the contract with the United States Government or until General Electric offer him another job.

5. The petitioners tax returns for the years at issue show the address 308 Elliot Street, Syracuse, New York. However, the petitioner did not reside there. The petitioner bought the house at 308 Elliot Street one week before he left for Alaska in December 1972. This provided a home for his daughter and source of support for his son who was still the petitioner's responsibility during the years at issue.

6. The petitioner was not in New York on the dates shown on the returns (see Findings of Fact "1" and "2"). The petitioner was in New York from approximately July 10, 1973 to August 20, 1973 and September 15, 1974 to October 20, 1974 while on vacation. The dates shown on the returns are the periods General Electric was withholding New York State taxes because the petitioner had not filed his declaration of residence for state tax purposes with General Electric. The petitioner's accountant used the dates shown on the return and the 308 Elliot Street address in the belief there would be fewer problems with the tax department.

CONCLUSIONS OF LAW

A. That a United States Citizen can change his domicile instantly, but 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)].

In the instant case the petitioner's move to Alaska was with the intention of working there and his residing in Alaska was related to petitioner's employment. That the petitioner has failed to sustain the burden of proof in accordance with section 689(e) of the Tax Law to show that he intended to

remain in Alaska permanently and that his employment there was only incidental to his move. Therefore, the petitioner's domicile remains in New York.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies 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 entire 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)].

That since the petitioner spent more than 30 days in New York State during each of the years at issue, he has not satisfied the aforementioned requirements. The petitioner is therefore a resident of New York State for tax purposes for the entire taxable years of 1973 and 1974 and subject to tax on income received from all sources.

C. That the petition of Arthur H. Christ is denied and the Notices of Deficiency issued on November 22, 1976 is sustained, together with such additional interest as may be legally owing.

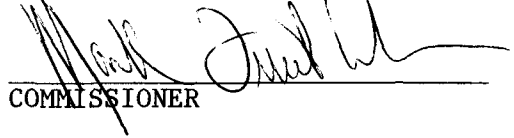
DATED: Albany, New York

~~FEB 27 1982~~ FEB 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER