

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Yvonne Zweifel de Ayulo :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Years 1974 - 1976. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

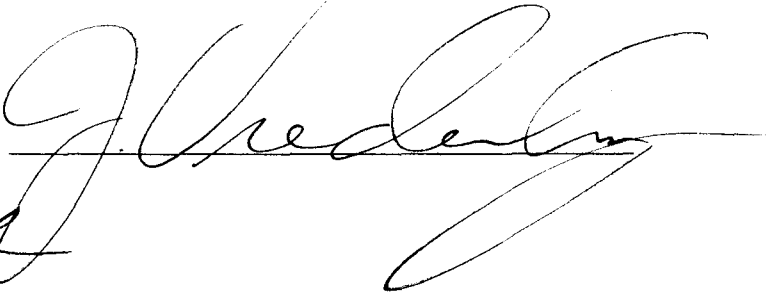
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Yvonne Zweifel de Ayulo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Yvonne Zweifel de Ayulo  
c/o Loeb, Block & Wacksman  
70 Pine St.  
New York, NY 10005

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  
11th day of June, 1982.


STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Yvonne Zweifel de Ayulo :  
for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 & 30 of the Tax Law for the :  
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AFFIDAVIT OF MAILING

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Stephen D. Kramer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

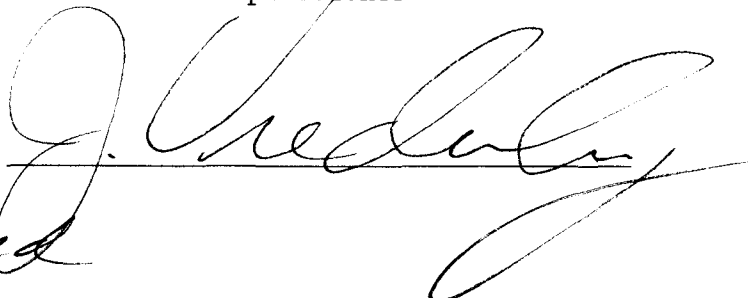
Stephen D. Kramer  
Loeb, Block & Wacksman  
70 Pine St.  
New York, NY 10005

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  
11th day of June, 1982.

  
Annie R. Heyland

  
Jay Vredenburg

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

June 11, 1982

Yvonne Zweifel de Ayulo  
c/o Loeb, Block & Wacksman  
70 Pine St.  
New York, NY 10005

Dear Mrs. de Ayulo:

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 & 1312 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  
Stephen D. Kramer  
Loeb, Block & Wacksman  
70 Pine St.  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
YVONNE ZWEIFEL de AYULO	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Tax under Articles 22 and 30 of the Tax	:	
Law for the Years 1974, 1975 and 1976.	:	

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Petitioner, Yvonne Zweifel de Ayulo, c/o Loeb, Block and Wacksman, 70 Pine Street, New York, New York 10005, filed petitions for the redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the years 1974, 1975 and 1976 (File Nos. 22947, 22948 and 28278).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1980. The petitioner appeared by Loeb, Block and Wacksman, Esqs. (Howard Berke, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner changed her domicile in 1956 from Germany to New York State and, if she did, whether she still retains that domicile despite her marriage in 1968 to a citizen and domiciliary of the Republic of Peru.

FINDINGS OF FACT

1. a. A Notice of Deficiency for the year 1974 was issued on February 27, 1978 against Yvonne (Zweifel) de Ayulo. This is in the amount of \$4,758.28, plus interest of \$892.80 for a total of \$5,651.08, less an overpayment of estimated tax on the tax return of \$1,100.00, for a net total of \$4,551.08.

The accompanying statement of audit changes shows the tax due to be \$3,658.28, plus interest of \$892.80, for a total of \$4,551.08. A Notice and Demand for Payment of such sums was issued on October 10, 1978 showing an assessment date of August 10, 1978 and additional interest of \$139.72 for a total of \$4,690.80.

b. A Notice of Deficiency for the year 1975 was issued on July 10, 1978 against Yvonne Zweifel de Ayulo. This is in the amount of \$2,207.75, plus penalty and interest of \$1,192.23, for a total of \$3,399.98. The accompanying Statement of Audit Changes dated April 20, 1978 shows a tax due of \$2,207.75, plus penalties pursuant to section 685(a) of the Tax Law for failure to file a return of \$496.74 (22.5%) and for failure to pay the tax when due of \$275.97 (12.5%) and interest in the amount of \$377.88, for a total due of \$3,358.34.

c. A Notice of Deficiency for the year 1976 was issued on August 9, 1979 against Yvonne Zweifel de Ayulo. This is in the amount of \$3,598.08, plus penalty and/or interest of \$2,021.73, for a total of \$5,620.81. This was accompanied by a Statement of Audit Changes dated June 10, 1979. This shows tax due for New York State of \$2,746.33 and New York City of \$852.55, for a total of \$3,598.88. Penalties under section 685(a) of the Tax Law are shown for failure to file a return (at 22.5%) of \$617.92 for the State and \$191.82 for the City and for failure to pay the tax when due (at 13.5%) of \$370.75 for the State and \$115.09 for the City. The penalties thus total \$1,295.58, interest is shown as \$508.42 for the State and \$157.83 for the City, for a total of \$666.25. The total amount due is \$5,560.71.

2. Petitioner was born and raised in Germany. She is still a German citizen and has a German passport.

3. Petitioner came to New York in 1956.

4. Petitioner files Federal income tax returns as a resident of the United States. She filed New York tax returns as a resident from 1956 through 1973. This was on advice of counsel. In each of those years petitioner spent more than 183 days in New York State. Since then she has not filed returns, also on advice of counsel.

5. Petitioner maintains a one bedroom apartment at 35 East 67th Street, New York, New York. She has had this apartment since 1956. Currently she uses the apartment primarily for storage. She stays overnight at the apartment only when she is not with her husband, which is rare. She receives mail at that address but the post office does not deliver it there and holds the mail until petitioner is in New York.

6. In 1968 petitioner was married to a Mr. Ernesto Ayulo, a citizen and domiciliary of the Republic of Peru. If petitioner is with her husband in New York, they stay at the Regency Hotel at 61st Street and Park Avenue.

7. Beginning in 1974 petitioner began traveling more with her husband in Europe and South America (he was 77 years old in 1974). In 1974, 1975 and 1976 petitioner spent not more than 183 days a year in New York State (this is not contested in the answers filed by the Audit Division to the petition of taxpayer).

8. Petitioner did not attend the hearing as she was in Cologne, Germany, with her mother, who was very ill.

#### CONCLUSIONS OF LAW

A. That petitioner is not taxable as a resident of New York as defined in section 605 of the Tax Law, since she spent not more than 183 days in New York in each year in question and she was not a domiciliary of New York. Even if she became a domiciliary of New York in 1956, she would have lost that

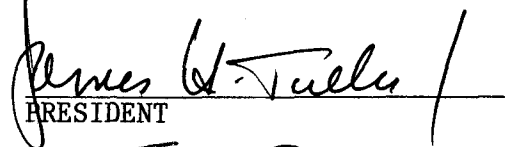
domicile in 1968 upon her marriage to a domiciliary of Peru. See 20 NYCRR 102.2(d)(5).

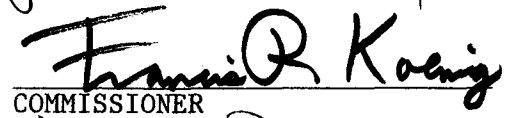
B. That the petitions of Yvonne Zweifel de Ayulo are granted and the notices of deficiency are cancelled.

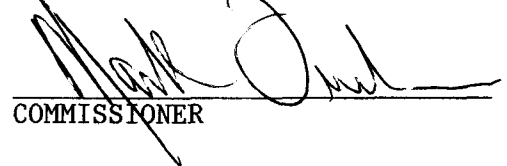
DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER