

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Virginia J. Dwyer :
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 :
Year 1976. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

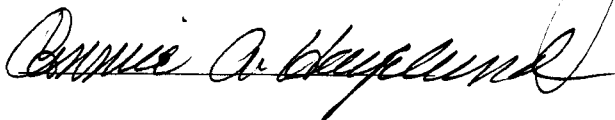
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Virginia J. Dwyer, the petitioner in the within proceeding,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

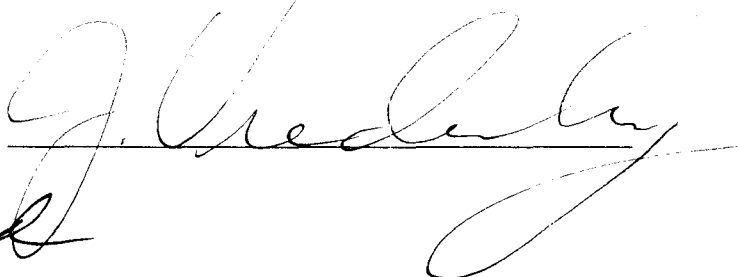
Virginia J. Dwyer
16-18 Conduit Rd.
Flat 12 - First Fl.
HONG KONG

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

In the Matter of the Petition :
of :
Virginia J. Dwyer :

AFFIDAVIT OF MAILING

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

Frederick L. Flynn
1734 Second Ave.
New York, NY 10028

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.

Bennie A. Haglund

J. Vredenburg

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

June 11, 1982

Virginia J. Dwyer
16-18 Conduit Rd.
Flat 12 - First Fl.
HONG KONG

Dear Mrs. Dwyer:

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
Frederick L. Flynn
1734 Second Ave.
New York, NY 10028
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
VIRGINIA J. DWYER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 and 30 of the Tax Law for the Year 1976.

:
:
:
:
:
:
:

DECISION

Petitioner, Virginia J. Dwyer, 16-18 Conduit Road, Flat 12, 1st Floor, Hong Kong, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 25021).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 8, 1981 at 2:45 P.M. Petitioner appeared by Frederick L. Flynn, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

Whether petitioner was domiciled in, and a resident of New York State and the City of New York during the entire taxable year 1976.

FINDINGS OF FACT

1. Petitioner, Virginia J. Dwyer, filed a New York State Income Tax Resident Return indicating that she was a New York State and City of New York resident for the period January 1 through September 30, 1976 whereon she

reported income and deductions attributable to such period as computed on a Schedule for Change of Resident Status filed in conjunction with said return.

2. On May 22, 1978 the Audit Division issued a Statement of Audit Changes to petitioner wherein she was held to be a domiciliary and resident of New York State and City of New York for the entire taxable year 1976. Accordingly, a Notice of Deficiency was issued against petitioner on November 28, 1978 asserting additional State and City personal income tax of \$725.42, plus interest of \$100.00, for a total due of \$825.42.

3. On or about October 1, 1976, petitioner, a life-long resident of New York State, was assigned by her New York employer to Hong Kong. As a result of such assignment she contended that she changed her residence to Hong Kong and simultaneously changed her domicile to the State of Delaware.

4. Petitioner argued that Delaware became her new domicile since she owned a home jointly with her brother in Rehoboth, Delaware, and her intent was to return there on termination of her Hong Kong assignment.

5. Petitioner terminated her lease on her New York City apartment and moved her furniture to Hong Kong.

6. Petitioner completed her Hong Kong assignment in 1981 at which time she returned to the State of New York.

CONCLUSIONS OF LAW

A. That the City personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. 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. (20 NYCRR 102.2(d)(2)).

C. "To create a change of domicile, both the intention to make the new location a fixed and permanent home and actual residence at such location, animus et factum, must be present; residence without intention, or intention without residence, is of no avail." (17 N.Y. Jur., Domicile and Residence, §12; Matter of Newcomb, 192 N.Y. 238, 84 N.E. 950). The record is clear that petitioner had no intention of making a fixed and permanent home in Hong Kong. It is equally clear that petitioner did not maintain physical presence in Delaware during the period at issue, but rather, her physical presence was maintained in Hong Kong. Accordingly, it must be held that petitioner was a domiciliary of New York State and the City of New York for the entire taxable year 1976.

D. 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)).

Since the above requirements were not satisfied, petitioner is deemed a resident of New York State and the City of New York for the entire taxable year 1976 pursuant to section 605(a) of the Tax Law.

E. That the petition of Virginia J. Dwyer is denied and the Notice of Deficiency dated November 28, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER