

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sue Feinberg

:

:

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 :
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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Sue Feinberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sue Feinberg
c/o Parker, Chapin, Flattau & Klimpl
530 Fifth Avenue
New York, NY 10036

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
4th day of August, 1982.

Amie P. Hageland

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Sue Feinberg :

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 :
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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Howard Denburg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard Denburg
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036

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
4th day of August, 1982.

Conrad P. Haglund

J. Vredenburg

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

August 4, 1982

Sue Feinberg
c/o Parker, Chapin, Flattau & Klimpl
530 Fifth Avenue
New York, NY 10036

Dear Ms. Feinberg:

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
Howard Denburg
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SUE FEINBERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

Petitioner, Sue Feinberg, c/o Parker, Chapin, Flattau & Klimpl, 530 Fifth Avenue, New York, New York 10036, 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 1974 (File No. 22465).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1980 at 1:15 P.M. Petitioner appeared by Parker, Chapin, Flattau & Klimpl, Esqs. (Howard Denburg, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner changed domicile from New York State to Italy during 1974.

FINDINGS OF FACT

1. Petitioner, Sue Feinberg, filed a New York State Income Tax Resident Return for the period January 1, through August 31, 1974 on which she claimed a refund of \$2,521.55. She stated she was not a New York resident after that period. Attached to the return was a statement that a nonresident return was not required because petitioner "had no New York State income or items of tax preference after the change of residence."

2. On April 10, 1978, the Audit Division issued a Statement of Audit Changes against petitioner, asserting that additional personal income tax and interest was due for 1974 on the stated ground that "(r)emoval from New York State for a temporary and limited period of employment does not constitute a permanent change of residence".

Accordingly, on April 10, 1978, a Notice of Deficiency was issued against the petitioner asserting personal income tax due for 1974 of \$4,281.45, plus interest of \$1,086.80, for a total of \$5,368.25.

3. Petitioner was born in New York City, attended school in New York City, attended college in Rhode Island, engaged in graduate work in Paris and, thereafter, worked for a time in both Paris and Rome. She then returned to New York City where she lived for three or four years prior to September 1, 1974, occupying, as lessee, an apartment located at 370 East 76th Street, New York City. She subleased her apartment in New York City effective August 31, 1974.

4. On September 1, 1974, petitioner vacated her said apartment located at 370 East 76th Street, New York City and moved to Italy, renting an apartment in the City of Florence and then, about a year later, renting another apartment in Florence, located on Viale del Poggio Imperiale. She has a renewable year by year lease on said apartment.

5. Petitioner built a kitchen and bookcases in the said apartment located in Florence, Italy, on Viale del Poggio Imperiale as aforesaid and moved to said apartment all of the furniture that had formerly been contained in her aforesaid apartment located at 370 East 76th Street, New York City. Petitioner still occupied said apartment at the time of the hearing aforesaid herein.

6. Prior to September 1, 1974, petitioner entered into a written agreement with Diane Von Furstenberg, Ltd., a New York corporation, pursuant to which the petitioner was employed for a period of five years beginning October 6, 1973 "to promote the interests of the Corporation" including "supervision of production of goods produced on behalf of the Corporation".

7. From September 1, 1974 until sometime in the Spring of 1978, petitioner engaged in Italy in the performance of her duties for Diane Von Furstenberg, Ltd., pursuant to the aforesaid agreement.

8. In the Spring of 1978, Diane Von Furstenberg, Ltd. sold its dress division to Puritan Fashions and Puritan Fashions, thereupon, continued to employ the petitioner in Italy pursuant to her aforesaid agreement with Diane Von Furstenberg, Ltd. until the term of said agreement expired, on or about October 6, 1978.

9. After the term of the petitioner's aforesaid agreement with Diane Von Furstenberg, Ltd. expired, Puritan Fashions discontinued production in Italy and offered the petitioner employment if she would move to New York, an offer that petitioner rejected because she "had an Italian boyfriend and...didn't want to move back to America".

10. Puritan Fashions then offered petitioner a job as consultant for it in Italy, which said offer petitioner accepted and performed as such consultant in Italy until the end of 1978.

11. In or about April, 1979, the petitioner was offered a job by Kayser Roth, which petitioner rejected because it would have required her to leave Italy and go to New York.

12. Thereafter petitioner was engaged to design and produce sweaters in Italy for an Italian manufacturer. Sweaters so designed and produced were to be sold all over the world. Petitioner produced a collection and came to New York City for one week in January, 1980 to attend and sell at the Italian Men's Show at the Waldorf Astoria Hotel. Petitioner then returned to Italy and sold in the men's shows there.

13. Petitioner returned to New York City in April, 1980 to visit her father, then eighty-four years of age and her only living relative.

14. By reason of the fact that petitioner's father fell and fractured his hip, petitioner continued to stay with her father in his apartment in New York City from the time of her arrival in New York City in April, 1980 to and including the time of the hearing herein in order to help him until he recovers.

15. Petitioner has had a boyfriend in Italy for the past nine years. It is his address, Vicolo della Campanella 6, Rome, Italy, that appears on the part year New York State Income Tax Resident Return for 1974 filed by petitioner as set forth in paragraph "1" hereof.

16. Petitioner testified that when her father recovers from his injury aforesaid she plans to return to Italy and that she is "going to marry" her aforesaid boyfriend "probably within the next six months".

17. Petitioner is an American, not an Italian citizen; has not applied for Italian citizenship; has an American passport; and has a tourist visa for Italy, good for three months, which is renewable every three months.

18. Petitioner alleged that she reported income and filed tax returns in Italy. However, no tax returns were submitted as evidence. She has bank accounts in both Italy and the United States, including both checking and three savings accounts in the United States.

19. Petitioner has not submitted any evidence to show that she had notified the Italian government that she is living and working in Italy. No permit was submitted to show she was allowed to stay in Italy for longer than two months. No special visa or work permit was submitted to show that she was allowed to live and work in Italy for any length of time.

CONCLUSIONS OF LAW

A. That the presumption against a foreign domicile is stronger than the general presumption against a change of domicile. Less evidence is required to establish a change of domicile from one state to another than from one nation to another. (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman, 50 A.D.2d 457.) United States citizens will not ordinarily be deemed to have changed their domicile by going to a foreign country unless it is clearly shown that they intend to remain there permanently. United States citizens domiciled in New York who go abroad because of an assignment by their employer do not lose their New York domicile unless it is clearly shown that they intend to remain abroad permanently and not to return [20NYCRR 102.2(d)(3)].

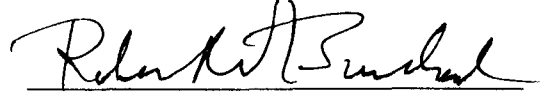
B. That the burden of proof is upon the petitioner to show a change of domicile to Italy. No documentary evidence was submitted by petitioner to show she intended to change her domicile to Italy in 1974. She moved to Italy as a result of a five year contract with her employer. She is staying in Italy on a tourist visa. (see Bodfish, supra) While petitioner has decided to stay in Italy at this time for personal reasons, there is no evidence to indicate that at the time of her move to Italy it was for reasons other than her five year employment contract.

C. That the petition of Sue Feinberg is denied and the Notice of Deficiency dated April 10, 1978 is sustained.

DATED: Albany, New York

AUG 04 1982

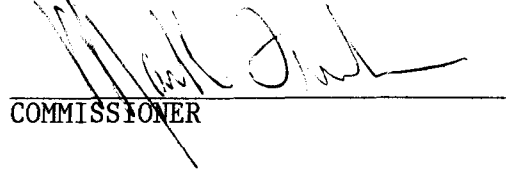
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER