

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

William H. & Susan W. Friesell

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon William H. & Susan W. Friesell, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William H. & Susan W. Friesell  
c/o Mark R. Rosenfeld  
Citibank, N.A., 399 Park Ave.  
New York, NY 10043


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  
8th day of September, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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of

William H. & Susan W. Friesell :

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Tax under Article 22 & 30 of the Tax Law for the :  
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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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Mark R. Rosenfeld the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark R. Rosenfeld  
c/o Citibank, N.A.  
399 Park Ave.  
New York, NY 10043

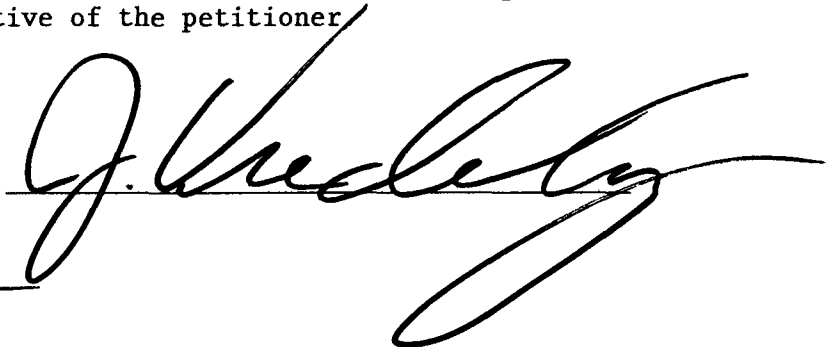
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
8th day of September, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
§ 205(1)(b)



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

September 8, 1982

William H. & Susan W. Friesell  
c/o Mark R. Rosenfeld  
Citibank, N.A., 399 Park Ave.  
New York, NY 10043

Dear Mr. & Mrs. Friesell:

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  
Mark R. Rosenfeld  
c/o Citibank, N.A.  
399 Park Ave.  
New York, NY 10043  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WILLIAM H. and SUSAN W. FRIESELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles 22	:	
and 30 of the Tax Law for the Year 1976.	:	

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Petitioners, William H. and Susan W. Friesell, c/o Mark R. Rosenfeld, Esq., Citibank, N.A., 399 Park Avenue, New York, New York 10043, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 26098).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1981 at 3:50 P.M. Petitioner appeared by Mark R. Rosenfeld, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State for personal income tax purposes during 1976.

FINDINGS OF FACT

1. On January 27, 1978, petitioners, William H. and Susan W. Friesell, filed a 1976 New York State Income Tax Nonresident Return from Rio de Janeiro, Brazil. Said return indicated petitioners were residents of New York State for two months. New York City taxes were also computed for both petitioners.

2. On July 11, 1978 petitioners indicated in a letter to the Audit Division that they revised their income tax return for 1976. They filed as nonresidents for the entire year and computed a refund of \$373.00.

3. On September 12, 1978, the Audit Division issued a Statement of Audit Changes against petitioners asserting additional income tax of \$9,373.13 (New York State \$7,174.18 and New York City \$2,198.95) against Mr. Friesell and \$1,678.12 (New York State \$1,247.88 and New York City \$430.24) against Mrs. Friesell. Said Statement was issued on the basis that petitioners spent more than 30 days in New York State during 1976 and, therefore, were taxable as residents. Accordingly, on December 15, 1978, the Audit Division issued a Notice of Deficiency against Mr. Friesell for \$9,373.13, plus interest and a Notice of Deficiency against Mrs. Friesell for \$1,678.12 plus interest.

4. Petitioners were both born in Pittsburgh, Pennsylvania, and grew up there. Mr. Friesell was educated in Pittsburgh through high school; he then attended Lafayette College in Easton, Pennsylvania, and returned to Pittsburgh for a Master's Degree at Carnegie-Mellon University. Mrs. Friesell went through high school in Pittsburgh, attended Western University in Oxford, Ohio, for two years, and then returned to Pittsburgh where she received her Bachelor's Degree from the University of Pittsburgh.

5. In August 1973, petitioners moved to New York City from Pittsburgh for the purpose of Mr. Friesell taking a position with Citibank, N.A. This was Mr. Friesell's first permanent job. Petitioners left in storage in Pittsburgh various effects, including clothing, rugs, cabinets and a grandfather clock.

6. Petitioners rented an apartment in Manhattan. Their first lease was for two years, the minimum term possible for the apartment on an initial basis.

After the expiration of this lease, they leased the apartment on an annual basis.

7. Petitioners opened a bank account at Citibank, N.A., because this was required by the bank for payroll purposes, but they continued to maintain their primary financial relationships with institutions in Pittsburgh. These included several active bank accounts in Pittsburgh and the management of their investments, which was handled by a broker in Pennsylvania. Petitioners' life insurance continued to be handled by an agent in Pittsburgh.

8. In November 1974, Mrs. Friesell executed a Will identifying her as "Susan W. Friesell of New York, New York...". The Will, however, was drafted, executed and maintained in Pittsburgh by petitioners' attorneys. The trustee under Mrs. Friesell's Will was the Mellon Bank of Pittsburgh.

9. Petitioners never registered to vote in New York, nor did they apply for New York drivers' licenses. Petitioners did not join any clubs in New York. Petitioners maintained Pennsylvania drivers' licenses during the time they lived in New York.

10. In October 1975, Mr. Friesell accepted a position with Citibank, N.A. in Rio de Janeiro, Brazil. More than a year earlier he had been advised that he would probably be sent by the bank to St. Louis, Detroit or Rio de Janeiro by the end of 1975. He was forced to remain in New York for the first two months of 1976 due to delays in the receipt of a visa and workpapers from the Brazilian government, combined with the difficulty of reserving accommodations for his family in Rio de Janeiro for the time required to find suitable housing due to the fact that hotels were fully booked for the carnival season. Petitioners departed from the United States for Brazil on March 6, 1976.

CONCLUSIONS OF LAW

A. That the 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 during the year at issue, section 605(a) of the Tax Law provided as follows:

"(a) Resident Individual. A resident individual means an individual:

(1) who is domiciled in this state unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in the armed forces of the United States during an induction period."

C. That "to effect a change of domicile, there must be an actual change in residence, coupled with an intention to abandon the former domicile and to acquire another." Aetna Nat'l Bank v. Kramer, 142 App. Div. 444, 126 N.Y.S. 970 (1st Dep't., 1911).

D. That petitioners, while physically present in New York State from August 1973 through February 1976, never had the requisite intention to abandon their Pennsylvania domicile and to acquire another. Petitioners maintained their financial connections in Pittsburgh, Pennsylvania, during the period they lived in New York. They continued to store certain of their personal effects in Pittsburgh, such as clothing, rugs and furniture.

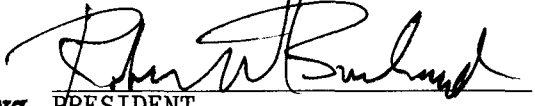
E. That in 1976 petitioners spent only two months in New York State, although Mr. Friesell did return to New York from Brazil for a few days later in the year for business meetings at Citibank, N.A. Neither petitioner spent in the aggregate more than 183 days of the taxable year in New York in 1976. Accordingly, petitioners were nonresident individuals of New York for the entire year.

F. That the petition of William H. and Susan W. Friesell is granted and the notices of deficiency dated December 15, 1978 are cancelled. The Audit Division is directed to recompute petitioners' New York State and City income tax as nonresidents for the entire year and to authorize the appropriate refund.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER