

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Armand & Rita Gerard

:

:

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 :
1975 & 1976.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Armand & Rita Gerard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Armand & Rita Gerard
1614 N. Queen St., Apt. 3
Arlington, VA 22209

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Jack Cagan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Cagan
1450 Broadway
New York, NY 10018

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
9th day of April, 1982.

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

April 9, 1982

Armand & Rita Gerard
1614 N. Queen St., Apt. 3
Arlington, VA 22209

Dear Mr. & Mrs. Gerard:

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
Jack Cagan
1450 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARMAND GERARD and RITA GERARD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioners, Armand Gerard, 1614 N. Queen Street, Arlington, Virginia 22209, and Rita Gerard, 45-15 Utopia Parkway, Flushing, New York 11358, 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 1975 and 1976 (File No. 21795).

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 November 7, 1979 at 9:15 A.M. Petitioners appeared by Jack Cagan, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Armand Gerard, was domiciled in, and a resident of the State of New York during 1975 and 1976.

FINDINGS OF FACT

1. Petitioners, Armand Gerard and Rita Gerard, timely filed a New York State combined income tax resident return for 1975. For 1976, they timely filed a New York State combined income tax resident return (with New York City personal income tax) and, attached thereto, a copy of their 1976 Virginia Individual Income Tax Return, indicating payment to Virginia, as well as New York, on the

aggregate income of both petitioners. Both of said New York State personal income tax returns claimed a credit for taxes paid to Virginia.

2. In May, 1977, petitioners filed amended New York State returns for 1975 and 1976. Petitioner Armand Gerard filed as a nonresident and claimed refunds of his entire tax previously paid during 1975 and 1976 of \$463.00 and \$1,139.00, respectively. Petitioner Rita Gerard filed separately as a resident and claimed refunds of \$10.00 and \$13.00, for 1975 and 1976 respectively.

3. On February 27, 1978, the Audit Division issued to petitioners a Notice of Disallowance with respect to the aforementioned refund claims, based on the contention that both petitioners were residents of New York State during the entire period at issue.

4. Petitioner Armand Gerard contended that he changed his domicile and residence from New York to the State of Virginia prior to the taxable years at issue.

5. Prior to and during 1973, petitioners were domiciled in New York State and resided in a house which they jointly owned, located at 45-15 Utopia Parkway, Flushing, New York. During the latter part of 1973, petitioner Armand Gerard, a printer by trade, was terminated from his employment with a private printing concern. Since he was unable to secure gainful employment, he went to Colorado to attend a two month course relating to conversion from hot to cold metal techniques in the printing industry. On returning from Colorado, he attempted to gain employment through his union. Unable to do so, he gained employment for a brief period with a nonunion shop. During this period, he applied for a position as a compositor with the U. S. Government Printing Office in Washington, D. C.

6. On August 21, 1974, petitioner Armand Gerard commenced employment with the U. S. Government Printing Office in Washington, D. C. in the position he applied for. He initially moved in to an apartment located at 6246 North 19th Street, Arlington, Virginia. Prior to January 1, 1975, he moved to a one-family house located at 1919 North Powhatan Street, Arlington, Virginia. At this location, Mr. Gerard paid rent of \$100.00 per month and contributed toward the expenses of the household, which he shared with the owner. On January 16, 1976, Mr. Gerard applied for rental of an apartment at 1614 North Queen Street, Arlington, Virginia. Said apartment was eventually secured by petitioner on April 6, 1978 as evidenced by an agreement of lease, wherein Armand Gerard and his wife, Rita Gerard, were listed as tenants. Petitioner Armand Gerard has since continuously resided at this location.

7. Petitioner Armand Gerard was not awarded "career tenure" in his job at the U.S. Government Printing Office until August 10, 1977.

8. Throughout the years at issue, petitioner Armand Gerard gave to his wife the funds needed to pay the mortgage on their jointly owned New York home.

9. Petitioner contended that at the time he moved to Virginia to commence employment in Washington, D. C., it was his intention to remain in Virginia permanently.

10. During the years at issue, petitioner Rita Gerard maintained her New York residence. She testified that she would have joined her husband in Virginia except that she was given the responsibility of caring for her husband's parents who resided with her prior to and during the years her husband was removed from New York State.

11. Petitioner Rita Gerard visited her husband, Armand Gerard, on numerous occasions during 1975 and 1976. He, in turn, spent approximately 25 days during each of said years visiting her in New York State.

12. Petitioners contended that the Flushing, New York address was used on their New York State returns against their judgement, based on advice of the tax preparer they used during the years at issue.

13. Petitioner Armand Gerard contended that on commencing employment in Washington, D. C., he was required to terminate his affiliation with Local 6 (New York City) of the International Typographical Union. The significance of this action was that no union job would be available to him in New York at any future time because the New York City Local had a "closed book".

14. Petitioners filed amended Virginia returns for 1975 and 1976, whereon Rita Gerard's income was removed from the computation resulting in refunds for both years as evidenced by Virginia Department of Taxation Income Tax Refund Information Statements.

15. Petitioner Armand Gerard has, since moving to Virginia, taken the following measures in Virginia indicative of his intent to remain there on a permanent basis:

- a. Opened savings and checking accounts there.
- b. Obtained a Virginia driver's license and automobile registration.
- c. Voted in Virginia.
- d. Joined the Columbia Typographical Union.
- e. Joined the Washington, D. C. typographical union's golfing league.

16. There was no showing that petitioner Armand Gerard was at any time denied access to the New York home.

17. Petitioners testified that they are presently engaged in finalizing transactions related to selling their New York home and purchasing a home in the State of Virginia.

CONCLUSIONS OF LAW

A. 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 [20 NYCRR 102.2(d)(2); Matter of Newcomb v. Dixon, 192 N.Y. 238, 250 (1908)]. The question of what place shall be considered the domicile of a party is one of fact rather than law (Pignatelli v. Pignatelli; 8 N.Y.S.2d 10). Evidence to establish the required intention to effect a change of domicile must be clear and convincing.

B. That "to effect a change of domicile, there must be an actual change of 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 Dept., 1911)].

C. That petitioner Armand Gerard did not effect a change of domicile from New York to Virginia prior to or during the years herein at issue. The actions of Armand Gerard during the years at bar, at best were actions in contemplation of a change of domicile to Virginia in a subsequent year.

D. That the maintaining of a permanent place of abode in New York by a domiciliary of New York is alone sufficient to make him a resident for tax purposes (20 NYCRR 102.2(e)).

E. That the petition of Armand Gerard and Rita Gerard is denied and the Notice of Disallowance issued February 27, 1978 in the amount of \$473.00 for 1975 and \$1,152.00 for 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 09 1982

PRESIDENT

Frank R. Koenig
COMMISSIONER

Mark J. Sullivan
COMMISSIONER

*I dissent
James H. Sullivan*

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

925

P 230 04

MAIL

RETURNED TO
ADDRESSER
NOT DELIVERABLE
AS ADDRESSED
UNABLE TO FOR

Detached from
PS Form 3849-A
May 1979

RETURN

2ND NOTICE

1ST NOTICE

DATE

☐ HOLD

CLAIM CHECK
NO.

Armand & Rita Gerard
1614 N. Queen St., Apt. 3
Arlington, VA 22209

M.H.
4.

STATE OF NEW YORK

STATE TAX COMMISSION

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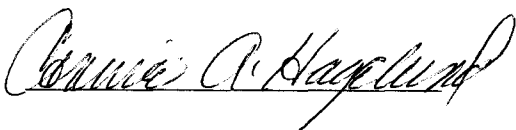
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of August, 1982, he served the within notice of Decision by certified mail upon Armand and Rita Gerard the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

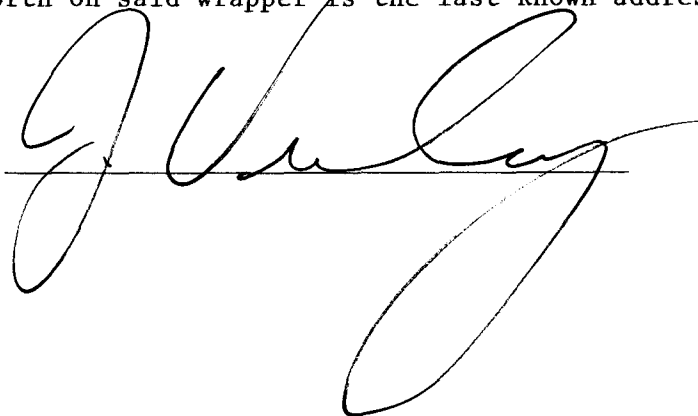
Armand and Rita Gerard
c/o Jack Cagan
1450 Broadway
New York, NY 10018

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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
20th day of August, 1982.





REQUEST FOR BETTER ADDRESS

Requested by <i>J. Uedenburg</i>	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>4-19-82</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>126-16-5200</i>	Date of Petition <i>SC. DC. 4-9-82</i>
Name <i>Armand & Rita Gerard</i>	
Address <i>1614 North Queen Street. Apartment #3 Arlington, Virginia 22209</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>no found EP</i>	
<input type="checkbox"/> Same as above, no better address		
<input checked="" type="checkbox"/> Other: <i>398-0060</i>	<i>no response. sent to Rep. c/o Jack Cagan 1450 Broadway New York, NY 10018</i>	
Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER