

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Russel S. Hume, Jr.
and Elizabeth H. Hume

:

:

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 :
1975.

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 Russel S. Hume, Jr., and Elizabeth H. Hume the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Russel S. Hume, Jr.
and Elizabeth H. Hume
1236 Ashmont Ave.
Piedmont, CA 94611

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.




STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Russel S. Hume, Jr. :
and Elizabeth H. Hume :

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of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Erik J. Stapper the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

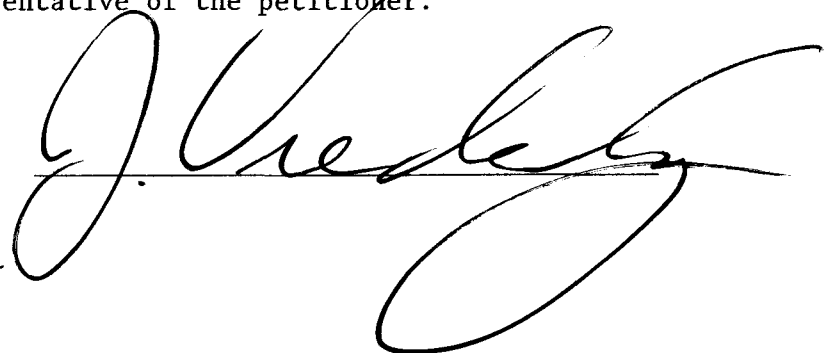
Erik J. Stapper
Stapper & Van Doren
200 Park Ave.
New York, NY 10166

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.

Annice A. Hagelund



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

August 4, 1982

Russel S. Hume, Jr.
and Elizabeth H. Hume
1236 Ashmont Ave.
Piedmont, CA 94611

Dear Mr. & Mrs. Hume:

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
Erik J. Stapper
Stapper & Van Doren
200 Park Ave.
New York, NY 10166
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RUSSELL S. HUME, JR. and ELIZABETH H. HUME
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Russell S. Hume, Jr. and his wife Elizabeth H. Hume, 1236 Ashmont Avenue, Piedmont, California 94611, 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 1975 (File No. 28754).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 12, 1981 at 9:30 A.M. Petitioners appeared by Stapper & VanDoren, Esqs. (Erik J. Stapper, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners ceased to be residents and domiciliaries of the State of New York on March 10, 1975.

FINDINGS OF FACT

1. The petitioners filed a joint 1975 New York State Income Tax Resident Return on Form IT-201 for the period ended March 10, 1975 which reported a total tax due of \$273.84 and requested a refund of \$3,691.09. In a statement attached to the return taxpayers stated that they had changed their domicile to Paris, France on March 10, 1975.

2. Petitioner Russell S. Hume, Jr. was a Securities Analyst and his wife was a housewife.

3. A Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes for the tax year 1975 to any time on or before April 15, 1980 was validated December 28, 1978.

4. On March 29, 1979 a revised Statement of Audit Changes was issued against petitioners asserting an increase of \$52,606.61 in their State income tax liability for the year 1975.

5. On August 31, 1979 the Audit Division issued a Notice of Deficiency against petitioners for the tax year 1975 as follows:

Tax Deficiency	\$52,606.61
Penalty and/or Interest	15,105.26
Balance Due	67,711.87

6. The amount of additional tax due was computed by treating taxpayers as residents of New York State for the entire year 1975 and by deducting from the taxpayers' total tax liability of \$56,571.57 the amount of tax withheld of \$3,964.96.

7. Until February 28, 1975, petitioner Russell S. Hume, Jr. was employed as a Vice President by Spencer Trask & Co., Incorporated at 60 Broad Street, New York, New York. He had announced his resignation at the November, 1974 board meeting. In late 1974, petitioners listed for sale their cooperative apartment at 200 Hicks Street, Brooklyn, New York 11201.

8. Effective as of March 1, 1975 Mr. Hume became a Senior Vice President of So Gen-Swiss International Corporation in charge of its office in Paris, France. Mr. Hume arrived in Paris, France on March 10, 1975 to take up his duties at the office of So Gen-Swiss International Corporation at 17, Avenue Matignon 75008 Paris, France. On March 28, 1975 Mr. Hume made an oral agreement

to lease an apartment at 152 Boulevard General deGaulle, Garches 92380, France as soon as its then occupant moved out.

9. The petition filed in this matter stated Mr. Hume "returned to the United States on April 11, 1975 for the purposes of arranging for (a) the sale of his cooperative apartment, (b) the shipment of his furniture and personal belongings and (c) the purchase of a house in Connecticut."

10. On May 19, 1975 petitioners executed a contract for the sale of their cooperative apartment. The closing took place on June 16, 1975. Prior thereto, on June 2, 1975, all furniture and personal belongings were moved out of the apartment and sent to the apartment in France for which petitioners had by then signed a six (6) year lease. On June 6, 1975, petitioners' ninety (90) day visa for France was converted into a carte de sejour which permitted them to work and remain in France indefinitely. Said document had to be renewed each year.

11. On March 10, 1975, petitioner Russell S. Hume, Jr. severed most of his relations with New York. Petitioners resigned from all of their civic activities. They never intended to nor have they returned to New York.

12. In January 1978, petitioner Russell S. Hume, Jr. was terminated from his job at So Gen-Swiss International. He subsequently attempted to go into business for himself.

13. As a result of the psychiatric illness of petitioners' oldest son and because of their difficulty of engaging what petitioners' thought was excellent psychiatric help, they relocated on January 21, 1978 to 1823 River Forest Road, Atlanta, Georgia where they resided until June 1980, when petitioners relocated to 1236 Ashmont Avenue, Piedmont, California where they presently reside.

CONCLUSIONS OF LAW

A. That in general, domicile is the place which an individual intends to be his permanent home. 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; this rule applies even though the individual may have sold his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct [20 NYCRR 102.2(d)(1) and (2)].

B. That a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently [20 NYCRR 101.2(d)(3)]. The burden of proof is increased by the strong presumption against acquisition of a foreign domicile (Matter of Klein v. State Tax Comm., 55 A.D.2d 982; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

C. That petitioners, Russell S. Hume, Jr. and Elizabeth H. Hume, have failed to sustain their burden of proof imposed by section 689(e) of the Tax Law to show with clear and convincing evidence an intent to change their domicile to France.

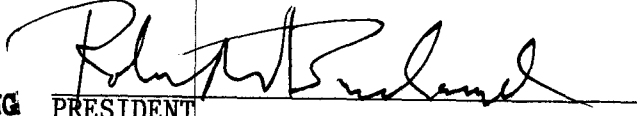
D. That the petition herein is denied and the Notice of Deficiency issued August 31, 1979 is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York
AUG 04 1982

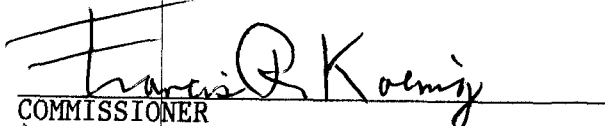
STATE TAX COMMISSION

ACTING

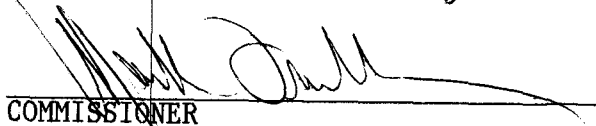
PRESIDENT

A handwritten signature in dark ink, appearing to read "Robert T. Brundage", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Francis R. Koenig", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Mark J. Jank", written over a horizontal line.