

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Charles M. & Jane L. Horstman :  
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. :

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 21st day of May, 1982, he served the within notice of Decision by certified mail upon Charles M. & Jane L. Horstman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles M. & Jane L. Horstman  
P.O. Box 666, 431 Caicos Dr.  
Punta Gorda, FL 33950

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  
21st day of May, 1982.

*Annie A. Haglund*

*J. Vredenburg*

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

May 21, 1982

Charles M. & Jane L. Horstman  
P.O. Box 666, 431 Caicos Dr.  
Punta Gorda, FL 33950

Dear Mr. & Mrs. Horstman:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CHARLES M. and JANE L. HORSTMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioners, Charles M. and Jane L. Horstman, P.O. Box 666, 431 Caicos Drive, Punta Gorda, Florida 33950, 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. 19893).

Petitioners requested, in writing, that the State Tax Commission issue a decision without the necessity for a formal hearing.

The State Tax Commission hereby issues the following decision based upon the record as presently constituted.

#### ISSUES

I. Whether or not petitioners were domiciliaries of the State of New York for the entire year 1974.

II. Whether petitioners effected a change of domicile in September 1974.

III. Whether petitioners were residents of the State of New York for income tax purposes during the entire year 1974.

#### FINDINGS OF FACT

1. Petitioner Charles M. Horstman was a pilot for Transworld Airlines, Inc., a New York employer in 1973 and 1974 and prior thereto. Mr. and Mrs. Horstman, during said period, resided in a home in Manhasset, New York which

they owned. On November 26, 1975 petitioners filed a New York resident return for the period January 1, 1974 through September 17, 1974.

2. On June 27, 1977 the Audit Division issued a Notice of Deficiency together with an explanatory Statement of Audit Changes against petitioners in the amount of \$1,669.40 plus interest. Petitioners timely filed a petition for redetermination of the aforesaid Notice of Deficiency. The Statement of Audit Changes stated, in part:

"Based on all available information, it has been determined that a recognizable change of domicile did not occur during the year 1974. You failed to show that a new, permanent domicile was established outside New York State, from which you did not intend to return. Therefore, it is considered that you were domiciled in New York State during the entire taxable year and since you spent more than 30 days of the taxable year in New York State, you are taxable in the same manner as any other New York State Resident.

Accordingly, total income reportable on your Federal return is subject to N.Y. State tax. The New York Tax Law does not allow the deduction of income taxes and foreign taxes. Therefore, the \$5,503.11 foreign tax included in itemized deductions will be eliminated."

3. In 1973, while residents of New York, the petitioners purchased a condominium on Longboat Key, Florida, which they rented to tenants in 1974 and 1975. This property was purchased for investment purposes.

4. In September 1974, petitioner Charles M. Horstman was assigned by his employer, Transworld Airlines, Inc., to work in Saudi Arabia for a period of two years. Prior to leaving for Saudi Arabia, the petitioners sold their home in Manhasset, New York.

5. Upon their return from Saudi Arabia in 1976, petitioners sold their condominium and built a house on a lot they had purchased in 1970 in Punta Gorda, Florida which is where they presently reside.

6. The residence of the petitioners in Saudi Arabia was of a temporary nature.

7. Prior to leaving for Saudi Arabia in September, 1974, the petitioners were domiciliaries of the State of New York.

8. Petitioners spent more than thirty days in the State of New York in 1974.

CONCLUSIONS OF LAW

A. That a domicile, once established, continues until a new one is clearly acquired. To effect such a change in domicile, there must be both an intent to change, as well as an actual change [20 NYCRR 102.2(d)].

B. That the petitioners did not effect a change of domicile in 1974 within the meaning and intent of 20 NYCRR 102.2(d).

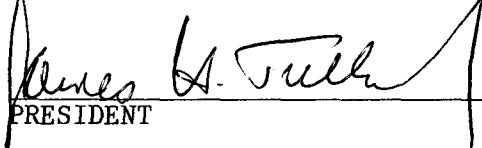
C. That since petitioners were domiciliaries of the State of New York during the year 1974 and spent more than 30 days within the State of New York during said year, they are deemed to have been residents of the State of New York for the entire year 1974, for income tax purposes, within the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2.

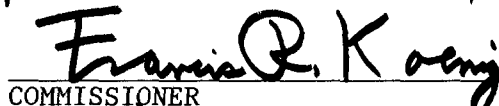
D. That the petition of Charles M. Horstman and Jane L. Horstman for the year 1974, is hereby denied and the Notice of Deficiency issued June 27, 1977 is sustained, together with such interest as lawfully due.

DATED: Albany, New York

MAY 21 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER