

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Moon H. & Young O. Jo	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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

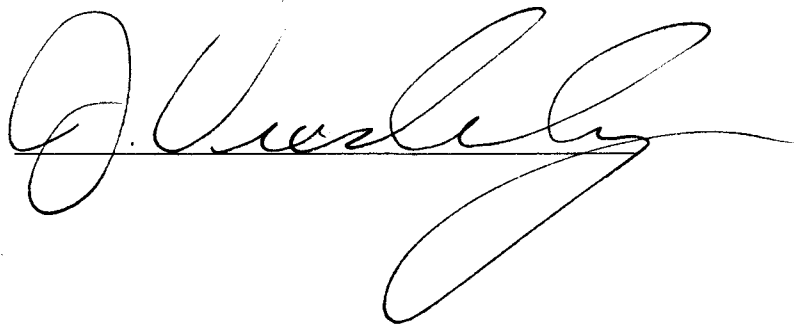
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Moon H. & Young O. Jo, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Moon H. & Young O. Jo  
1330 Mansel Ave.  
Williamsport, PA 17701

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 :  
Moon H. & Young O. Jo :

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  
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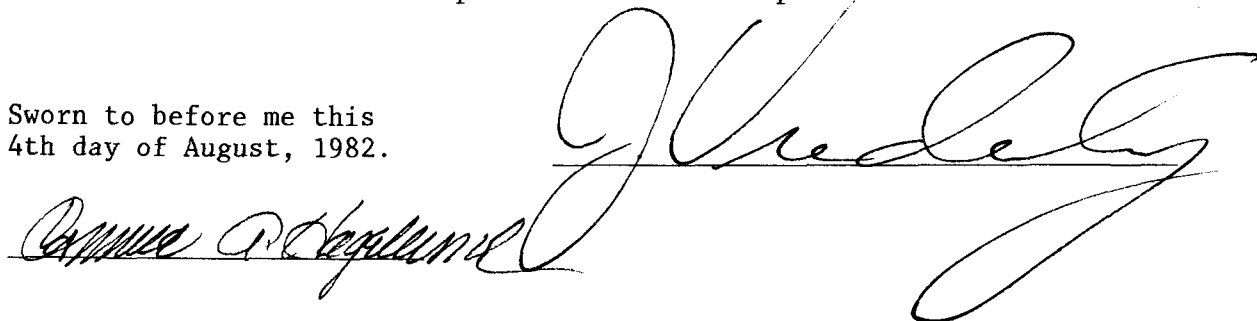
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Aaron Spieler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aaron Spieler  
33 Roosevelt Ave.  
Malverne, NY 11565

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.

The block contains two handwritten signatures. The signature on the right is large and cursive, appearing to read 'Jay Vredenburg'. The signature on the left is smaller and more stylized, appearing to read 'James A. DeGallone'.

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

August 4, 1982

Moon H. & Young O. Jo  
1330 Mansel Ave.  
Williamsport, PA 17701

Dear Mr. & Mrs. Jo:

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  
Aaron Spieler  
33 Roosevelt Ave.  
Malverne, NY 11565  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
MOON H. JO AND YOUNG O. JO  
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.

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DECISION

Petitioners, Moon H. Jo and Young O. Jo, 1330 Mansel Avenue, Williamsport, Pennsylvania 17701, 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. 27387).

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 December 2, 1981 at 1:15 P.M. Petitioners appeared by Aaron Spieler. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether petitioner Moon H. Jo was domiciled in and a resident of the State of New York during the taxable years 1975 and 1976.

FINDINGS OF FACT

1. Petitioners, Moon H. Jo and Young O. Jo, filed a joint New York State Income Tax Resident Return for each of the years 1975 and 1976 whereon they reported their address as 85 Nassau Avenue, Malverne, New York 11565. Additionally, Young O. Jo inadvertently filed an unincorporated business tax return for each of said years on income derived from the practice of the profession of dentistry.

2. On April 13, 1978 petitioners filed claims for credit or refund of the unincorporated business tax paid by petitioner Young O. Jo for the years 1974, 1975 and 1976. Upon review of said claims the Audit Division noted that petitioners' personal income tax returns filed for the years 1975 and 1976 excluded the income of Moon H. Jo which was derived from sources without the State of New York. Since petitioners filed as full year residents for the years at issue, separate statements of audit changes were issued for 1975 and 1976 on December 1, 1978 whereon petitioner Moon H. Jo's income was held taxable for New York State personal income tax purposes. Pursuant to said statements, petitioners were given credit for the unincorporated business taxes erroneously paid by Young O. Jo for the years 1974, 1975 and 1976. Additionally, a resident tax credit of \$241.72 was allowed petitioner Moon H. Jo for taxes paid in 1976 to the State of Pennsylvania. Accordingly, separate notices of deficiency were issued against petitioners on March 30, 1979 asserting additional personal income tax for 1975 of \$1,389.89, plus interest of \$337.88, for a total due for 1975 of \$1,727.77, and additional personal income tax for 1976 of \$977.27, plus interest of \$162.26, for a total due for 1976 of \$1,139.53.

3. While it was conceded that petitioner Young O. Jo was a full year New York State resident for the years 1975 and 1976, petitioners contended that Moon H. Jo was a resident of Pennsylvania during said years.

4. During the years at issue, petitioner Young O. Jo resided in a house purchased in January 1974, in her name only, located at 85 Nassau Avenue, Malverne, New York 11565. Said premises were also used for her dental practice.

5. Petitioner Moon H. Jo was employed as an Assistant Professor in Sociology by Eastern New Mexico University in Portales, New Mexico "for the regular academic session of the 1974-75 University year". Subsequently, he was

employed by Lycoming College, Williamsport, Pennsylvania. Such employment, which commenced September 1, 1975, continued throughout the balance of the years at issue.

6. Although it was contended that Moon H. Jo was a resident of Pennsylvania during 1975 and 1976, the record shows (Finding of Fact "5" supra) that he was physically located in New Mexico for a substantial portion of 1975.

7. Petitioner Moon H. Jo provided no information with respect to the nature of the places of abode he maintained in New Mexico and Pennsylvania during the years at issue.

8. While petitioner Moon H. Jo was employed in Pennsylvania, he visited his wife and son in New York every other week-end.

#### CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent (20 NYCRR 102.2(d)(1)).

Petitioner, Moon H. Jo has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax law to show that he was a bonafide domiciliary of a state other than New York during the years 1975 and 1976. Accordingly, he was domiciled in New York State during said years.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

Petitioner, Moon H. Jo has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he has satisfied the requirements set forth. Accordingly, he is deemed a resident of New York State for the entire taxable years 1975 and 1976.

C. That the petition of Moon H. Jo and Young O. Jo is denied and the notices of deficiency dated March 30, 1979 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER



New York State Tax Commission

**TAX APPEALS BUREAU**

State Campus,  
Albany, New York 12227

JOHN J. SOLLECITO

DIRECTOR

Telephone: (518) 457-1723

October 8, 1982

Donald R. Johnson  
Apartado De Correo 2155  
Quito, ECUADOR

Dear Mr. Johnson:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 1312 & 690 of the Tax Law, any proceeding in court to review this decision must be commenced 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 the undersigned at the above address.

Very truly yours,

Joseph Chyrywaty

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 :  
Donald R. Johnson : DEFAULT ORDER  
: 82-C-29  
for Redetermination of Deficiency or for Refund of :  
NYS & NYC Income Tax under Article 22 & 30 of the :  
Tax Law for the Year 1977. :

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Petitioner(s) Donald R. Johnson filed a petition for redetermination of deficiency or for refund of NYS & NYC Income Tax under Article 22 & 30 of the Tax Law for the Year 1977. File No. 31888.

A pre-hearing conference on the petition was scheduled before Carolyn Mitchell, at the offices of the State Tax Commission, Two World Trade Center, Room 65-51, New York, New York 10047 on Wednesday, July 21, 1982 at 9:00 a.m. Notice of said pre-hearing conference was given to petitioner(s). Petitioner(s) did not appear at the pre-hearing conference. A default has been duly noted.

Now on motion of the State Tax Commission, it is

ORDERED that the petition of Donald R. Johnson be and the same is hereby denied.

DEFAULT ORDER  
ADOPTED BY THE STATE TAX COMMISSION  
ALBANY, NEW YORK  
OCTOBER 8, 1982