

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Charles S. McVeigh III
and Pamela O. McVeigh

: 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

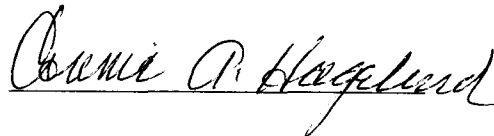
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of July, 1982, he served the within notice of Decision by certified mail upon Charles S. McVeigh III, and Pamela O. McVeigh the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles S. McVeigh III
and Pamela O. McVeigh
20 Cheyne Walk
London SW3, ENGLAND

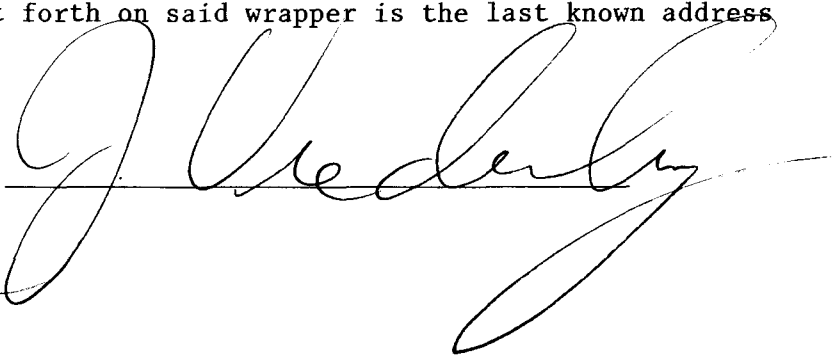
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 July, 1982.



Connie R. Haglund



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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and Pamela O. McVeigh :

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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 9th day of July, 1982, he served the within notice of Decision by certified mail upon Jack Wong 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 Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 10004

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 July, 1982.

Carmie A. Haglund

J. Vredenburg

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

July 9, 1982

Charles S. McVeigh III
and Pamela O. McVeigh
20 Cheyne Walk
London SW3, ENGLAND

Dear Mr. & Mrs. McVeigh:

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 Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CHARLES S. McVEIGH III and PAMELA O. McVEIGH
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, Charles S. McVeigh III and Pamela O. McVeigh, 20 Cheyne Walk, London SW3, England, 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. 23479).

On October 29, 1981, petitioners, by their representatives Oppenheim, Appel, Dixon & Co. (Jack Wong, CPA), waived a formal hearing and consented to submission of this matter to the State Tax Commission.

ISSUE

Whether petitioners effected a change of domicile to the United Kingdom in the year 1975.

FINDINGS OF FACT

1. On June 19, 1978, the Audit Division issued to petitioner Charles S. McVeigh III a Notice of Deficiency asserting additional personal income taxes due for the year 1975 in the amount \$4,686.00, plus interest. On the same date, the Audit Division issued to petitioner Pamela O. McVeigh a Notice of Deficiency asserting additional personal income taxes due for 1975 in the amount \$6,620.00, plus interest. The Audit Division's position was that

petitioners had not changed their domicile; therefore, as New York residents, petitioners were "subject to tax on income properly includible as Federal adjusted gross income."

2. Until August 2, 1975, petitioners resided in a home in Locust Valley, New York with their three children. On that date they departed for London, England, presumably in order that Mr. McVeigh could assume his new position as managing director of Salomon Brothers International Ltd. Mr. McVeigh had previously been an investment banker with the New York City office of Salomon Brothers. Mr. McVeigh did not offer a copy of his employment contract.

3. As indicated on petitioners' Federal Form 2119 for 1975, Sale or Exchange of Personal Residence, petitioners purchased a new residence located at 20 Cheyne Walk, London, at a cost in excess of \$170,000.00, sometime prior to December 31, 1976, although the specific date of the purchase is not disclosed. Petitioners sold their former residence in Locust Valley on September 3, 1975 and moved all their furniture and personal effects to London.

4. Petitioners entered the United Kingdom as resident aliens. Their entering visas contained no limitation as to length of stay and are automatically renewed by the appropriate authorities every 12 months.

5. Mr. McVeigh's Wage and Tax Statement for 1975 reflects \$90,704.46 of his salary as earned for services rendered at his employer's New York office, which income was subject to withholding taxes, and \$6,460.00 as earned for services performed at Salomon Brothers International Ltd. Petitioners informed the Inland Revenue Service that they are residents of the United Kingdom and have been held subject to tax as such. Their United Kingdom return for 1975 was prepared by their English accountants.

6. Petitioners did not avail themselves of a deduction or credit for taxes paid to the United Kingdom.

7. Petitioners filed Federal Form 2555 for 1975, Exemption of Income Earned Abroad, stating therein that they lived abroad with their family commencing August 2, 1975; that they had purchased a house; and that they did not maintain a home in the United States while living abroad.

8. Petitioners joined a country club in London, opened checking and charge accounts in the United Kingdom and purchased a country home in Surrey.

9. Due to various tax considerations, petitioners have not revised or amended their last wills.

10. Petitioners' Federal Schedule E for 1975, Supplemental Income Schedule, shows rental income, less depreciation and expenses (insurance; salaries and wages), for a house situated in Locust Valley, New York.

11. Petitioners appended to their 1975 New York State Combined Income Tax Return, a Schedule for Change of Resident Status, on which they stated that Mr. McVeigh had \$22,558.00 salary income during the period of residency, and that neither had any New York income whatsoever during the period of nonresidency.

12. Petitioners' representative stated the following with regard to their intentions:

"When the taxpayers left the State of New York, it was their intent to relinquish their New York domicile and to establish a new permanent residence in London, England. They did not intend to return to the U.S. unless, at some future point in time, the political and economic climate in England became unbearable which would necessitate their return to this country."

CONCLUSIONS OF LAW

A. That a change of domicile requires an intent to give up the old and take up the new, coupled with acquisition of a residence in the new place;

intent and actual residence in the new location must coincide. The test of intent with respect to the purported new domicile is "whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it." Matter of Bourne, 181 Misc. 238, 246, affd., 267 A.D. 876, affd., 293 N.Y. 785. "The evidence to establish the required intention to effect a change in domicile must be clear and convincing [citation omitted]. The presumption against a foreign domicile is stronger than the general presumption against a change of domicile." Matter of Bodfish v. Gallman, 50 A.D.2d 457, 458.

B. That petitioners have failed to establish by a preponderance of the evidence that they became domiciliaries of the United Kingdom in 1975. Petitioners moved to the United Kingdom and purchased a house there in connection with Mr. McVeigh's employment. "[A] United States citizen domiciled in New York, who goes abroad because of an assignment by his employer..., does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return." 20 NYCRR 102.2(d)(3). Petitioners did not offer Mr. McVeigh's employment contract nor any explanation of the terms thereof. Thus, they have not clearly shown that they intended to remain abroad permanently and that Mr. McVeigh's arrangement with Salomon Brothers was anything other than a temporary foreign work assignment of uncertain duration. See Matter of Klein v. State Tax Commission, 55 A.D.2d 982, affd. mem., 43 N.Y.2d 812; Matter of Jack C. Brueckman, Jr. and Carol A. Brueckman, State Tax Commission, April 10, 1981 [TSB-H-81(133)I].

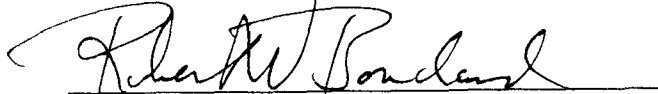
C. That petitioners were domiciliaries and residents of this state for the entire year 1975. Tax Law Section 605(a)(1).

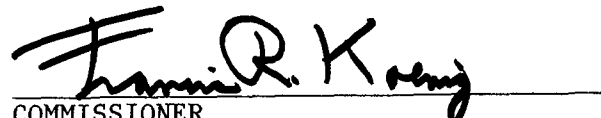
D. That the petition of Charles S. McVeigh III and Pamela O. McVeigh is denied and the notices of deficiency issued June 19, 1978 are sustained in full.

DATED: Albany, New York

JUL 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER