

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Herbert P. Mosca :

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 :
1973.

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Herbert P. Mosca, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert P. Mosca
3-20 Rappongi Chome Minato-Ku
Tokyo, JAPAN

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
18th day of June, 1982.

Norman A. Haglund

[Signature]

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Herbert P. Mosca

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for Redetermination of a Deficiency or a Revision :
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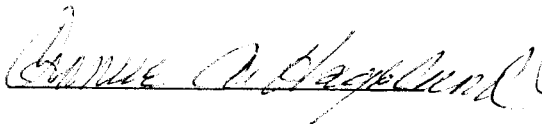
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1982, he served the within notice of Decision by certified mail upon Robert S. Lusthaus the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

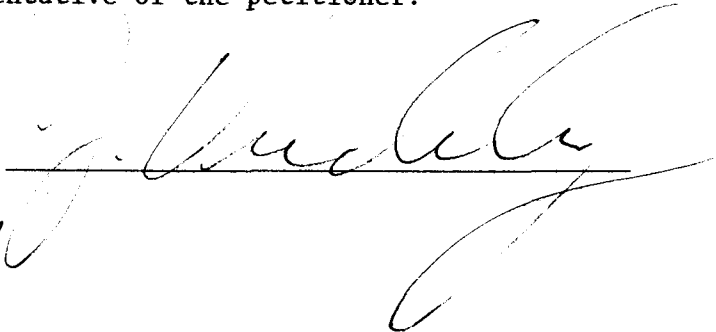
Robert S. Lusthaus
Cohen & Lusthaus
600 Old Country Rd.
Garden City, NY 11530

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
18th day of June, 1982.





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

June 18, 1982

Herbert P. Mosca
3-20 Rappongi Chome Minato-Ku
Tokyo, JAPAN

Dear Mr. Mosca:

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
Robert S. Lusthaus
Cohen & Lusthaus
600 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HERBERT P. MOSCA AND BETTY JEAN J. MOSCA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the year 1973.	:	

Petitioners, Herbert P. Mosca and Betty Jean J. Mosca, Homat President, Apartment 340, 3-20 Roppongi I-Chome, Minato-Ku, Tokyo, Japan, 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 1973 (File No. 19882).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1981 at 10:45 A.M. Petitioners appeared by Robert S. Lusthaus, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (S. Freund, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State during the entire year 1973.

FINDINGS OF FACT

1. On April 4, 1975, the Audit Division received a New York State Combined Income Tax Return for the year 1973 from petitioners Herbert P. Mosca and Betty Jean J. Mosca. The aforementioned tax return was marked "Final" and indicated that petitioners resided in New York State from January 1, 1973 to June 20, 1973.

2. On May 8, 1975 the Audit Division sent a letter to petitioners, requesting additional information needed to complete the audit of their tax

return for the year 1973. On August 20, 1975, due to petitioner's failure to reply to the aforementioned letter, the Audit Division issued a Statement of Audit Changes, wherein the personal income tax liabilities of petitioners Herbert P. Mosca and Betty Jean J. Mosca were individually recomputed on the basis that they were residents of New York State for the entire year 1973.

3. On June 27, 1977, the Audit Division issued a Notice of Deficiency against petitioner Herbert P. Mosca for the year 1973 for \$2,265.85 plus interest, along with an explanatory revised Statement of Audit Changes based on the recomputation shown on the original Statement of Audit Changes issued on August 20, 1975.

4. Also on June 27, 1977 the Audit Division issued a Notice of Deficiency against petitioner Betty Jean J. Mosca for the year 1973 for \$182.90 plus interest of \$43.89, along with an explanatory revised Statement of Audit Changes based on the recomputation shown on the original Statement of Audit Changes issued on August 20, 1975. The aforementioned revised Statement of Audit Changes was stamped "PAID" on August 12, 1977 by the Income Tax Review Unit in Albany, New York.

5. Petitioners Herbert P. Mosca and Betty Jean J. Mosca moved to, and purchased a home in, E. Setauket, New York in August, 1967.

6. On June 29, 1973, petitioner Herbert P. Mosca's employer assigned him to it's Far East Office in Tokyo, Japan. Accordingly, petitioners sold their home in New York State and moved to an apartment in Tokyo, Japan.

7. Petitioners contended that their move was permanent and that they intended to establish a new domicile in Japan. No evidence was submitted as to whether the new place of abode in Japan was the permanent home of petitioners, with the range of sentiment, feeling and permanent association with it. In

addition, no evidence was submitted indicating whether petitioners were permanent immigrants of Japan.

8. Petitioner Herbert P. Mosca indicated on a statement attached to the petition that "Upon completion of my assignment in Japan, I am going to retire on the west coast of the United States where I own two pieces of property".

9. Petitioners contended that they were originally from Pennsylvania, resided in New York State temporarily and that they were not domiciled in New York State.

CONCLUSIONS OF LAW

A. That petitioners Herbert P. Mosca and Betty Jean J. Mosca have failed to sustain their burden of proof as required by section 689(e) of the Tax Law in establishing that they were domiciled somewhere other than New York State. In addition, no clear and convincing evidence was submitted showing an intent to change their domicile from New York State to Japan. (Matter of Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S. 2d 138.)

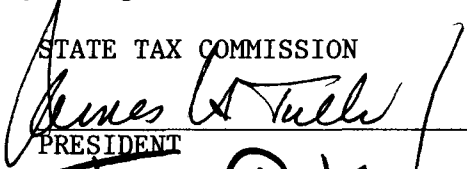
B. That petitioners Herbert P. Mosca and Betty Jean J. Mosca were domiciled in, and residents of, New York State for the entire year 1973 in accordance with the meaning and intent of section 605 of the Tax Law.


C. That the petition of Herbert P. Mosca and Betty Jean J. Mosca is denied and the notices of deficiency issued June 27, 1977 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by <i>C. Hagelund</i>	Unit <i>Cal</i>	Date of Request <i>10-19-82</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>SC - 6-18-82</i>
Name <i>Mosca, Herbert P.</i>	
Address <i>3-20 Rappingi Chome Minato-ku Tokyo Japan</i>	

Results of search by Files

<input type="checkbox"/> New address: <i>leaf</i>	<i>20 100 released 10-11-82 RZ</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

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

20

Herbert P. Mosca
3-20 Rappongi Chome
Tokyo, JAPAN
Shinjuku-ku

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

June 18, 1982

Herbert P. Mosca
3-20 Rappongi Chome Minato-Ku
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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert S. Lusthaus
Cohen & Lusthaus
600 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HERBERT P. MOSCA AND BETTY JEAN J. MOSCA
for Redetermination of a Deficiency or for
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