

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas J. & Maurine M. Murtagh :  
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. :  
\_\_\_\_\_ :

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Thomas J. & Maurine M. Murtagh, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas J. & Maurine M. Murtagh  
200 E. 66th St.  
New York, NY 10021

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  
11th day of June, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York  
County of Albany

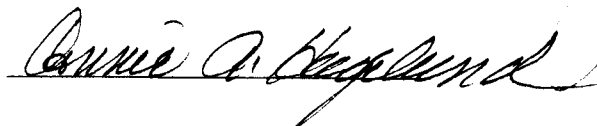
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Harry Palmer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

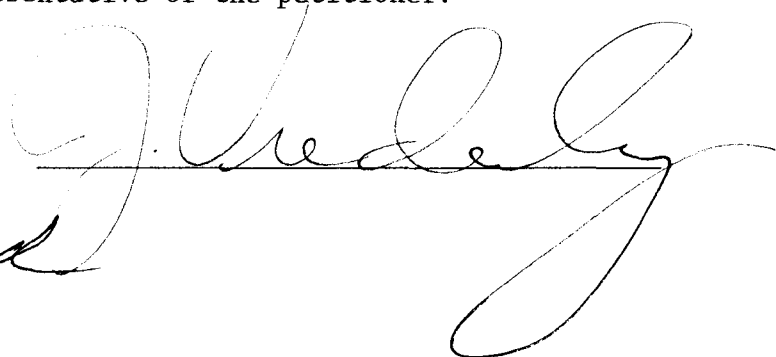
Harry Palmer  
Biller & Snyder  
75 Maiden Lane  
New York, NY 10038

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  
11th day of June, 1982.

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

June 11, 1982

Thomas J. & Maurine M. Murtagh  
200 E. 66th St.  
New York, NY 10021

Dear Mr. & Mrs. Murtagh:

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  
Harry Palmer  
Biller & Snyder  
75 Maiden Lane  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
THOMAS J. MURTAGH and MAURINE M. MURTAGH  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1975.

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DECISION

Petitioners, Thomas J. Murtagh and Maurine M. Murtagh, 200 East 66th Street, New York, New York 10021, 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. 21148).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 30, 1981 at 1:30 P.M. Petitioners appeared by Biller and Snyder (Harry Palmer, CPA and Sydney Smolowitz, Esq.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioners are subject to tax as residents of the State of New York.

II. Whether a distribution which Thomas Murtagh received in 1975 but which occurred in 1974 from an employer in England before he entered New York is taxable by New York State.

FINDINGS OF FACT

1. Petitioners, Thomas J. Murtagh and Maurine M. Murtagh, filed a joint New York State Income Tax Resident Return for the 1975 calendar year. On this

return, petitioners reported that they were residents of New York from January 23, 1975 to December 31, 1975.

2. On December 27, 1976, the Audit Division issued a Statement of Audit Changes with an IT-38 Attachment asserting a deficiency of personal income tax on the ground that petitioners were considered New York residents for the entire 1975 calendar year. Accordingly, on October 31, 1977 the Audit Division issued a Notice of Deficiency asserting a deficiency of \$3,156.18, plus interest of \$130.06, for a total of \$3,286.24. This Notice of Deficiency also gave petitioners credit for an overpayment of \$2,165.93 on the return thereby reducing the amount due to \$1,120.31.

3. Petitioner, Thomas Murtagh, was born in San Francisco, California. Thomas Murtagh also had his early schooling in California.

4. Thomas Murtagh's first employment position was with Englehard Industries. Petitioner initially worked for Englehard Industries at the firm's headquarters in Newark, New Jersey. Subsequently, Thomas Murtagh worked for this firm in San Francisco, California.

5. In 1959 Thomas Murtagh came to New York to begin working for the firm of Smith, Barney and Company. He participated in a training program and after several years he became an officer in the company.

6. In March, 1973 petitioner Thomas Murtagh terminated his employment with Smith, Barney and Company and accepted a position as a "Managing Director" of Western American Bank, a merchant banking corporation owned by various international banks in London, England.

7. After about a year with the banking organization in London, Thomas Murtagh assumed a position which was effectively that of the chief executive officer of the bank.

8. As a result of an oil embargo, chaos was caused in the banking industry. This, in turn, reduced Thomas Murtagh's employer's operations and in September, 1974, Thomas Murtagh's position was terminated.

9. The termination of Thomas Murtagh's position caused petitioner to seek other employment. In the course of seeking new employment, Thomas Murtagh interviewed and considered positions in the United Kingdom, France, and the United States. Subsequently, he accepted employment with the firm of Dean, Witter in a position located in New York.

10. Petitioner returned to New York on January 23, 1975.

11. When Thomas Murtagh's position with the bank in London ended in September, 1974, he became entitled to a lump-sum payment by reason of his termination with the pension plan of the bank. Although this lump-sum distribution was due and payable upon the conclusion of his employment with the bank, petitioners' New York State Income Tax Resident Return reveals that Thomas Murtagh did not receive payment until January 21, 1975.

12. Thomas Murtagh reported his income on a cash basis.

13. When Thomas Murtagh moved to London, he terminated the lease on his apartment in New York. At the time he terminated his lease, Thomas Murtagh had to pay some charges for work that had to be done on the apartment. When he terminated his lease, he did not reserve an interest in the building or reserve a lease.

14. When petitioners arrived in London, they initially rented and later bought a one-family home. The cost of the home was between \$160,000.00 and \$180,000.00 (U.S.).

15. Upon returning to New York, Thomas Murtagh obtained an apartment in the same building in which he had formerly resided.

16. Thomas Murtagh was a member of New York clubs before moving to London. He did not terminate his membership in these clubs when he moved for reasons of business convenience. Mr. Murtagh also joined clubs when he moved to London. When he moved from London to New York he terminated his membership in the London clubs.

17. While Thomas Murtagh resided in New York before moving to London he maintained savings accounts and checking accounts in New York. When he moved to London he closed some bank accounts but continued to maintain a New York savings accounts and a New York checking account. Thomas Murtagh maintained New York bank accounts because of the volatile nature of the "dollar-sterling" relationship. The bank accounts were maintained in New York out of convenience, since they already existed.

18. Thomas Murtagh and his wife, Maurine Murtagh, were married shortly before leaving New York for London. Maurine Murtagh was born in Atlanta, Georgia, and came to New York to work after attending graduate school. She had been in New York for two or three years before leaving for London.

19. Thomas Murtagh was a parishioner of a church while he resided in New York. When he returned to New York, he resumed his affiliation with the same church. While Thomas Murtagh was in London he attended a church and did not consider himself a parishioner of the New York church.

20. Thomas Murtagh was a registered voter in New York. However, he did not vote by absentee ballot in 1973 and 1974.

21. Thomas Murtagh did not take steps to establish British citizenship.

#### CONCLUSIONS OF LAW

A. That once a domicile is established it will continue "...until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there." (20 NYCRR 102.2(d)(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 102.2(d)(3))

C. That in Matter of Bodfish v. Gallman, (50 A.D.2d 457, 458) the Court stated:

"To change one's domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residence in the new locality (Matter of Newcomb, 192 NY 238, 250-251). The test of intent with respect to a purported new domicile has been stated as '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, aff'd. 267 App. Div. 876, aff'd. 293 NY 785). The evidence to establish the required intention to effect a change in domicile must be clear and convincing (Ruderman v. Ruderman, 193 Misc. 85, 87, aff'd. 275 App. Div 834)."

D. That in view of the facts, Thomas Murtagh has failed to establish by clear and convincing evidence that at the time he moved to London, England, he had the range of sentiment, feeling, and permanent association needed to establish a new domicile (see Matter of Bodfish v. Gallman, supra). Therefore, Thomas Murtagh was a domiciliary of New York during the year in issue.

E. That a wife's domicile ordinarily follows that of her husband (20 NYCRR 102.2(d)(5)). Therefore, Maurine Murtagh was also a domiciliary of New York.

F. That 20 NYCRR 102.2(b) provides, in part:

"(b) Certain persons not deemed residents although domiciled in New York. 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..."



G. That since petitioners have failed to satisfy the criteria of 20 NYCRR 102.2(b) they are deemed residents of New York for the entire 1975 taxable year.

H. That Tax Law §654(c)(3) provides that no item of income accrued under Tax Law §654(c) shall be taken into account in determining New York adjusted gross income for any subsequent taxable period. However, the provisions of Tax Law §654(c) may be utilized only if a change of residence occurs during the course of the taxable year and such a change may only occur if there is also a change of domicile during the course of the taxable year. Since petitioners did not change their domicile or residence during the years 1974 or 1975, they were not permitted to utilize the accrual provisions of the Tax Law §654(c) and thereby exclude the lump-sum pension payment received during the year in issue (Matter of Arthur L. Grimes and Doris H. Grimes, State Tax Commission, November 8, 1973).

I. That the petition of Thomas Murtagh and Maurine Murtagh is denied and the Notice of Deficiency dated October 31, 1977 is sustained.

DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER