

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
James R. Prudencio

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 :
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 16th day of July, 1982, he served the within notice of Decision by certified mail upon James R. Prudencio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

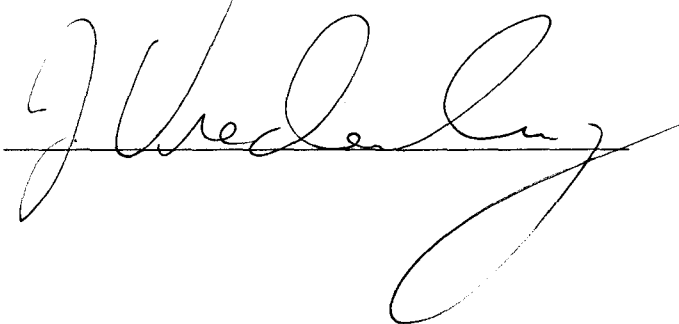
James R. Prudencio
Ave. de las Fuentes 280-3
Pedregal de San Angel, MEXICO 20 D.F.

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
16th day of July, 1982.





STATE OF NEW YORK

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of :
James R. Prudencio :
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Tax under Article 22 of the Tax Law for the Year :
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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 16th day of July, 1982, he served the within notice of Decision by certified mail upon Bernard Wald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Wald
Wald & Wald
500 Fifth Ave.
New York, NY 10036

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
16th day of July, 1982.

Connie R. Hagelund

J. Vredenburg

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

July 16, 1982

James R. Prudencio
Ave. de las Fuentes 280-3
Pedregal de San Angel, MEXICO 20 D.F.

Dear Mr. Prudencio:

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 & 1312 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
Bernard Wald
Wald & Wald
500 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES R. PRUDENCIO

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Article 30 of
the Tax Law for the Year 1976.

Petitioner, James R. Prudencio, Ave. de las Fuentes 280-3, Pedregal de San Angel, Mexico, 20, D.F., filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 26562).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York City, New York, on December 11, 1981 at 9:15 A.M. Petitioner appeared by Bernard Wald, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Samuel J. Freund, Esq. of counsel).

ISSUE

Whether petitioner was liable for income tax as a resident for the entire year 1976.

FINDINGS OF FACT

1. On January 23, 1978, petitioner, James R. Prudencio, and his wife, Consuela Prudencio, filed a 1976 New York State and New York City resident combined return on which claimed that they were New York State and New York City residents for eight months. They sought a refund of \$560.20.

2. On August 1, 1978 the Audit Division issued a Statement of Audit Changes against petitioner and his wife proposing additional income tax for the year 1976 on the grounds that a taxpayer did not change domicile solely by going abroad as a condition of employment and that a new domicile must be established. As petitioner and his wife were citizens of the United States and deemed domiciliaries of New York for the entire year (1976), income from all sources for said year was held to be taxable. Exemption under section 911 of the Internal Revenue Code, standard deduction and exemption credit were allowed at 100 percent rather than on the 8/12 basis as no change of residence was considered as having taken place. Accordingly a Notice of Deficiency was issued against James R. Prudencio on November 28, 1978 in the amount of \$3,104.00 plus interest of \$427.99.

3. James R. Prudencio was born in Bolivia. He was an economist with Engelhard Minerals and Chemicals Corp. He resided at Forest Hills, New York. On September 3, 1976 he applied for a visa to enter Mexico to work for Phibro Mexico, a division of Engelhard. He traveled under a Bolivian passport. His nationality was listed as Bolivian. He "recovered" his Bolivian nationality on April 6, 1977 according to his passport. On January 26, 1978 he formally renounced his United State nationality. The certificate of loss of nationality stated that he resided in the United States from 1958 to 1976 and acquired United States nationality by virtue of naturalization on October 19, 1971 at the Eastern District of New York, New York.

4. In 1976, petitioner rented a residence in Mexico and the following year purchased one. He was advised by his attorney to wait a year when he became a bona fide Mexican resident before giving up his United States citizenship so that he could exclude some income for 1976 and more for 1977.

His retort was "I will think about it, but I still intend to give up my citizenship." He filed a United States income tax return in 1977.

CONCLUSIONS OF LAW

A. That the Personal Income Tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (thought uncited) to the corresponding sections of Article 30.

B. That a domicile is the place which an individual intends to be his permanent home and the place to which he intends to return whenever he may be absent. [20 NYCRR 102.2(d)(1)]. A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. The burden is upon any person asserting a change of domicile to show that the necessary intentions existed. [20 NYCRR 102.2(d)(2)]. The evidence must be clear and convincing to establish required intention to effect a change in domicile (Matter of Newcomb, 192 N.Y. 238).

C. That although the petitioner, James R. Prudencio, physically moved to Mexico, he failed to show that he established a new domicile in 1976 within the meaning and intent of 20 NYCRR 102.2(d)(2). Therefore, he was domiciled in New York State for the tax year 1976.

D. That petitioner, James R. Prudencio, being a New York domiciliary, maintained a permanent place of abode in New York State for part of 1976 and spent more than thirty days in New York in said year. Therefore, petitioner

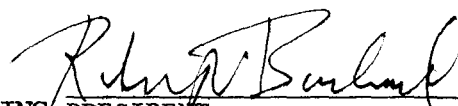
was a resident of New York State for income tax purposes in 1976, within the meaning and intent of section 605(a) of the Tax Law.

E. That the petition of James R. Prudencio is denied and the Notice of Deficiency issued on November 28, 1978 is sustained, together with such interest as may be lawfully owing.


DATED: Albany, New York

JUL 16 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER