

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur Rankin, Jr. :
and Barbara Rankin : 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
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 Arthur Rankin, Jr., and Barbara Rankin the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

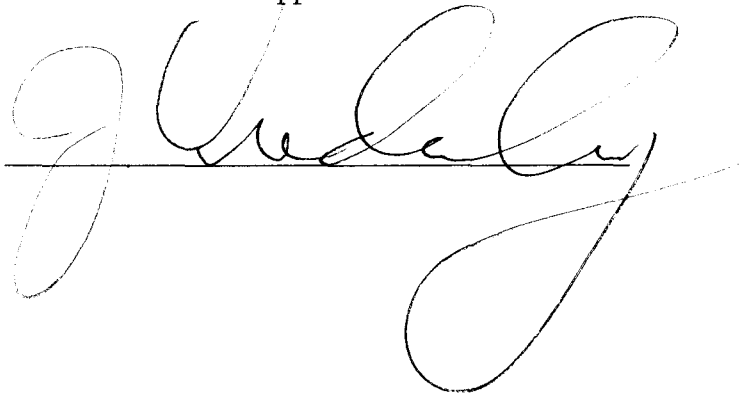
Arthur Rankin, Jr.
and Barbara Rankin
"Shibui" Knapton Hill
Smith's Parish, BERMUDA

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

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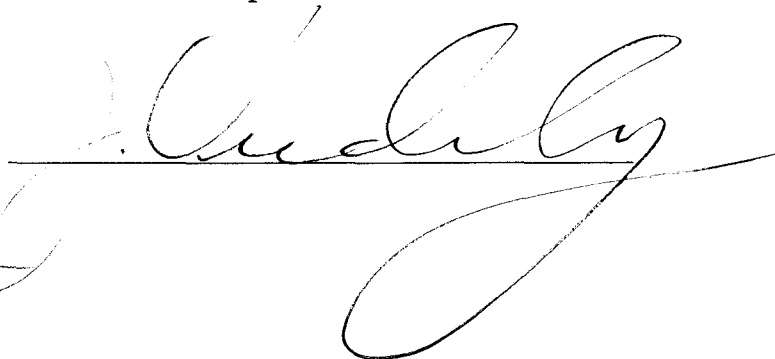
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Robert E. Harrison the representative of the petitioner in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

Robert E. Harrison
Richard A. Eisner & Co.
380 Madison Ave.
New York, NY 10017

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.





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

June 11, 1982

Arthur Rankin, Jr.
and Barbara Rankin
"Shibui" Knapton Hill
Smith's Parish, BERMUDA

Dear Mr. & Mrs. Rankin:

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 E. Harrison
Richard A. Eisner & Co.
380 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR RANKIN, JR. AND BARBARA RANKIN	:	DECISION
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.	:	

Petitioners, Arthur Rankin, Jr. and Barbara Rankin, residing at "Shibui", Knapton Hill, Smith's Parish, Bermuda, 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. 23758).

A formal hearing was held before Irving Atkins, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 17, 1981, at 9:25 A.M. Petitioners appeared by Robert E. Harrison, Esq. (for Richard A. Eisner & Co.). The Audit Division appeared by Ralph J. Vecchio, (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioners had effected a change of domicile from New York to Bermuda in 1974.

FINDINGS OF FACT

1. Petitioner Arthur Rankin, Jr., filed a New York State Income Tax Nonresident Return (Form IT-203) for the year 1975, and together with his wife, petitioner Barbara Rankin, filed a joint New York State Income Tax Nonresident Return (Form IT-203/209) for the year 1976. Each of these returns were deemed timely filed on June 7, 1976 and June 6, 1977 respectively, pursuant to automatic extensions of time to file granted to petitioners.

2. A Statement of Audit Changes was issued to the petitioners on April 17, 1978, asserting additional income tax due New York State and New York City as follows:

1975	-	\$10,264.48 (State)
1976	-	6,085.08 (State)
1976	-	<u>2,180.99 (City)</u>

Total Tax Due \$18,530.55 plus interest.

3. On July 10, 1978 two notices of deficiency were issued to petitioners: the notice for 1975 was for \$10,264.48 in tax plus accrued interest of \$1,950.58, for a total of \$12,215.06 and was addressed to Mr. Rankin individually; the notice for 1976 was for \$6,085.08 - (State) plus \$2,180.99 - (City), a total of \$8,266.07 plus accrued interest of \$868.19, for a total amount due of \$9,134.26 and was addressed to both petitioners.

4. Mr. Rankin's New York State Income Tax Nonresident Return for 1975 (IT-203) with attachments, including a copy of his U.S. Individual Income Tax Return (Form 1040), reported a total New York income of \$15,149.00 as compared with a Federal adjusted gross income of \$99,845.00.

5. Petitioners' joint 1976 Nonresident New York State Return (IT-203/209) with attachments reported Federal adjusted gross income of \$59,047.00, and a New York total income of \$3,319.00.

6. Mr. Rankin owned his own home in New York City, at 116 East 30th Street. He was engaged in the business of producing and directing films for television and theatrical distribution, including the writing of scripts and designing animation. Mr. Rankin spent substantial periods of time in each year on business outside the United States.

7. Records submitted at the hearing show that Mr. Rankin has been to Bermuda many times since 1971, and that on October 19, 1971 he was granted a

license by Bermudian officials permitting him to acquire real property in Bermuda.

8. In November 1971, Mr. Rankin purchased a one-half interest in his present home in Bermuda. He purchased the other half on December 6, 1974.

9. Mr. Rankin sold his New York residence on November 27, 1974, and caused his personal belongings and household furnishings to be shipped from New York to Bermuda.

10. On December 3, 1974, Mr. Rankin entered Bermuda. The Bermudian Immigration authorities admitted Mr. Rankin to Bermuda with a restrictive indorsement stamped into his U.S. Passport stating that "Holder must not engage in gainful occupation".

11. Notwithstanding the above restriction, Mr. Rankin did enter into an agreement with Interfilm Limited ("Interfilm"), incorporated January 13, 1975 as an exempted company under the laws of Bermuda.¹ Under this agreement, Mr. Rankin was to attempt to develop motion picture activities in and for Bermuda. His duties as Head of Production included consultation, negotiation and supervision of all company productions, as well as procuring foreign films.

¹ An exempted company under section 6 of the Exempt Company Act of Bermuda, 1950, as amended:

"shall not have power...

* * *

(d) to carry on business in these islands except ... (ii) in furtherance of the business of the company carried on exterior to Bermuda." (emphasis added).
(Revised Laws of Bermuda, Title 17, Item 11)

12. Mr. Rankin acquired a Bermuda drivers license, joined the "Mid-Ocean Club" (a social and athletic organization), and became involved in social, civic and charitable activities after entering Bermuda.

13. Mr. Rankin contends he was integrated into Bermudian society when he entered Bermuda December 3, 1974, and he points out that he has not maintained a U.S. residence since he sold his New York City home on November 27, 1974.

14. Mr. Rankin contends that the 1974 sale of his New York residence, his physical departure from the United States and his entry into Bermuda effectively terminated his New York domicile and created a domicile in Bermuda as of December 3, 1974.

15. Mr. Norman Topper, who had formerly been the partner in the Eisner accounting firm responsible for Mr. Rankin's account, testified that Mr. Rankin had, on many occasions, between December 1974 and 1980 expressed his intention and desire to become a citizen of Bermuda.

16. Mr. Topper further testified that both he and Mr. Harrison had counselled Mr. Rankin during those years (1974-1980) not to apply for Bermudian citizenship because it was too drastic a step to take.

17. On October 2, 1980, Mr. Rankin was granted a Certificate of Naturalization under the British Nationality Act of 1948 by the Governor of Bermuda. This certificate required that Mr. Rankin take an oath of allegiance within thirty days thereafter for it to become effective. Such oath of allegiance was executed by the petitioner later that month. Thereafter, on November 4, 1980 Mr. Rankin was granted Bermudian status pursuant to Section 19(5) of the Bermuda Immigration and Protection Act of 1956.

18. On December 29, 1980, Mr. Rankin executed a Statement of Voluntary Relinquishment of United States Nationality which was filed with the American Consul in Hamilton, Bermuda.

19. Petitioner Barbara Rankin was not employed during the period at issue herein.

20. Mr. Rankin was present in New York in connection with a business known as Rankin/Bass Productions, Inc. ("Rankin/Bass"), located in New York City and of which he was fifty (50) percent owner, a total of 128 days in 1975 and 77 days in 1976 respectively.

CONCLUSIONS OF LAW

A. That "...to effect a change of domicile, there must be an actual change of residence, coupled with an intention to abandon the former domicile and to acquire another." Aetna National Bank v. Kramer 142 A.D. 444, (1st Dept., 1911). There must be an intent to make the new location a fixed and permanent home, coupled with an actual acquisition of a residence in the new locality, and the evidence to establish the required intention to effect a change in domicile must be clear and convincing. Klein v. State Tax Commission, 55 A.D.2d 982, 390 N.Y.S.2d 686 (3rd Dept. 1977), aff'd, 43 N.Y.2d 812, 402 N.Y.S.2d 396 (1977); Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138 (3rd Dept. 1976). See also Matter of Newcomb, 192 N.Y. 238, 250-251.

B. That "[t]he 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 N.Y. 785)." Matter of Bodfish v. Gallman, 50 A.D.2d 457.

C. That regulations of the State Tax Commission provide:

"A domicile once established continues until the person in question moves to a new location with the intention of making his fixed and permanent home there. No change of domicile results from the removal to a new location if the intention is to remain only for a limited time;..." 20 NYCRR 102.2(d)(2), emphasis added.

D. That domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests upon the party who alleges a change. Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138 (3rd Dept. 1976). "Less evidence is required to establish a change of domicile from one state to another than from one nation to another" Matter of Newcomb, 192 NY at 250.

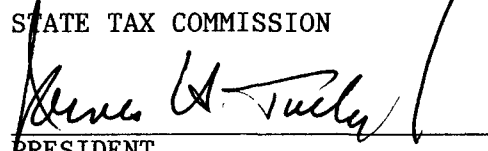
E. That petitioners Arthur Rankin, Jr. and Barbara Rankin changed their domicile from New York to Bermuda in December 1974, and were not domiciled in New York during the years at issue herein.

F. That the petition of Arthur Rankin, Jr. and Barbara Rankin is granted and the notices of deficiency are cancelled.


DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER