

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen & Adele Safka :
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

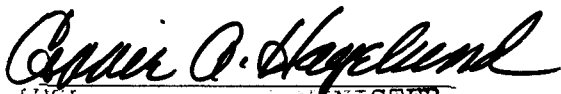
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of September, 1982, he served the within notice of Decision by certified mail upon Stephen & Adele Safka, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen & Adele Safka
14 Spratt Ave.
Staten Island, NY 10306

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
8th day of September, 1982.



AUTHORIZED CLERK
OATHS PURSUANT TO TAX LAW
SECTION 174



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

September 8, 1982

Stephen & Adele Safka
14 Spratt Ave.
Staten Island, NY 10306

Dear Mr. & Mrs. Safka:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
STEPHEN SAFKA and ADELE SAFKA
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, Stephen Safka and Adele Safka, 14 Spratt Avenue, Staten Island, New York 10306, 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. 27200).

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 October 30, 1981 at 10:45 A.M. Petitioner Stephen Safka appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York State to Singapore during 1975.

FINDINGS OF FACT

1. Petitioners, Stephen Safka and Adele Safka, filed a joint resident tax return for 1975. Said return was signed by petitioners on February 19, 1977 and submitted with a copy of a Federal application for extension of time for

filing with an approved extended due date of February 22, 1977. Included also was a Schedule for Change of Resident Status indicating petitioners' period of New York residence to be January 1, 1975 to July 22, 1975. No income was allocated to New York State sources for the period beginning July 23, 1975 through the balance of the tax year.

2. On July 15, 1977, a Statement of Audit Changes was issued with the following explanation: "For New York State income tax purposes, a temporary transfer abroad by one's employer does not constitute a permanent change of residency. Therefore, you are considered to be a New York Resident for the entire year of 1975 and as such taxable on all income from all sources." On March 30, 1979, a Notice of Deficiency was issued in the amount of \$916.57 plus interest.

3. Petitioner Stephen Safka testified that his employer had originally transferred him to Singapore for a minimum of two years and that, prior to the expiration of the two year period (late December 1975), petitioner was transferred to Indonesia. Petitioners' furniture was stored in a warehouse in New Jersey in anticipation of establishing a residency in New Jersey near their children upon their return to the United States.

4. Being unable to secure suitable permanent housing in Singapore, petitioners lived in rented hotel accommodations. While in Indonesia, petitioner rented company constructed housing.

5. In June 1976, petitioners, for medical reasons, returned to the United States spending a week in Hawaii and then two and one-half months in the Catskill Mountains recuperating before looking for a residence. Thereafter,

petitioners spent two weeks living in a New Jersey motel while looking for an apartment near their children in New Jersey. Being unsuccessful, petitioners returned to the Staten Island area and, as of September 1, 1976, rented a home there. This was the area where petitioners lived prior to the overseas assignment.

6. No information or testimony was adduced as to whether petitioners entered Singapore on an immigration visa or work permit. Petitioners made no statements to foreign officials indicating their intent to file immigration papers.

CONCLUSIONS OF LAW

A. That 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 (20 NYCRR 102.2(d)(2)).

B. That the presumption against a foreign domicile is stronger than the general presumption against a change of domicile and 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 N.Y. 238; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

C. That petitioners have failed to show that they intended to remain in Singapore any longer than petitioner Stephen Safka's period of employment. Therefore, petitioners did not establish a new domicile in Singapore and accordingly remained domiciled in New York State.

D. That petitioners were domiciled in New York State and residents of this State during 1975 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

E. That the petition of Stephen Safka and Adele Safka is denied and the Notice of Deficiency issued March 30, 1979 is sustained together with such interest as may be lawfully due.

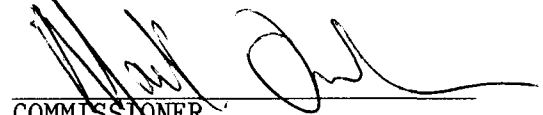
DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER