

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Dino & Eva Sonnino : 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 :
1972 & 1973.

State of New York
County of Albany

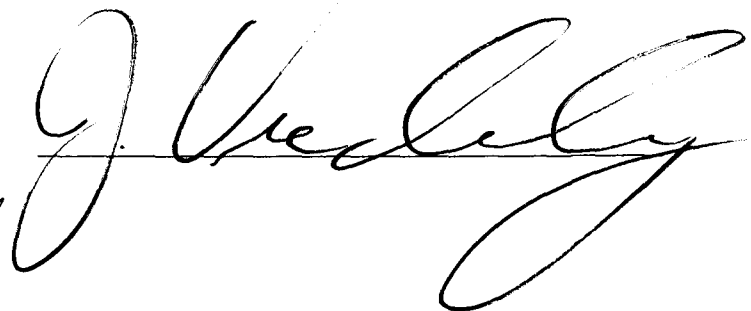
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Dino & Eva Sonnino, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dino & Eva Sonnino
c/o Ralph Pastore, George R. Fuanaro & Co.
420 Lexington Ave.
New York, NY 10170

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
4th day of August, 1982.

Connie O. Hagelund 

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Dino & Eva Sonnino

:

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 :
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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Ralph Pastore the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph Pastore
George R. Funaro & Co.
420 Lexington Avenue
New York, NY 10107

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
4th day of August, 1982.

Annice A. Haglund

J. Vredenburg

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

August 4, 1982

Dino & Eva Sonnino
c/o Ralph Pastore, George R. Funaro & Co.
420 Lexington Ave.
New York, NY 10170

Dear Mr. & Mrs. Sonnino:

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
Ralph Pastore
George R. Funaro & Co.
420 Lexington Avenue
New York, NY 10107
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
DINO SONNINO and EVA SONNINO	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

Petitioners, Dino Sonnino and Eva Sonnino, Oligiata 27-F, Via Cassia 1951, 00123, Rome, Italy, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 16335 and 12402).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 11, 1978. Petitioners appeared by Jack R. Ross, Esq. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioners were "resident individuals" of New York State for personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Dino Sonnino and Eva Sonnino, filed a New York State Combined Income Tax Return for 1972, on which they listed their home address as being in Rome, Italy and also indicated that they were residents of New York State from January 1, 1972 to November 10, 1972. Petitioners filed a New York State Income Tax Nonresident Return for 1973, on which they reported no New York State income, while indicating Federal income of \$48,349.21. They requested

a refund of New York State tax withheld of \$730.59 which they claimed was withheld erroneously from their wages.

2. A Notice of Deficiency and a Statement of Audit Changes were issued on November 24, 1975 against petitioner Dino Sonnino for 1972, for income taxes due of \$2,227.00, plus \$436.09 in interest, for a total of \$2,663.09.

3. A Notice of Deficiency and a Statement of Audit Changes were issued on November 24, 1975 against petitioner Eva Sonnino for 1972, for income taxes due of \$1,521.00, plus \$297.84 in interest, for a total of \$1,818.84.

4. A Statement of Audit Changes was issued on February 5, 1976 against petitioners, Dino Sonnino and Eva Sonnino, for 1973, for income taxes due of \$3,624.70, plus interest.

The Notice of Deficiency for 1973 issued on July 26, 1976, however, was issued only against petitioner Dino Sonnino.

5. Petitioners subsequently filed timely petitions for revisions of these deficiencies.

6. Until November 10, 1972, it is undisputed that petitioners were residents of and were domiciled in New York and that they maintained a permanent place of abode at 44 Gramercy Park North, New York, New York 10010.

7. Dino Sonnino was born in Italy on November 8, 1912. Both Dino and Eva Sonnino are American citizens.

8. On December 14, 1968, petitioners purchased a parcel of land in Rome, Italy, at the address Via Cassia 1951.

9. Subsequently, they built a house on this land. It was completed by April 26, 1972. The cost, of land, construction and taxes together, was over \$100,000.00.

10. The Sonninos owned and continue to own the apartment at 44 Gramercy Park North, as well as the furniture in it. They did not dispose of the apartment because their son has lived in the apartment, and because of the tax consequences which would result from the sale of the apartment. They have also maintained contact with the United States because of the political situation in Italy.

11. Petitioners have not voted in the United States since moving to Rome on November 10, 1972. They still maintain various bank accounts and a brokerage account in New York State.

12. On November 27, 1972, petitioners registered with the authorities in Rome as residents of Via Cassia 1951.

13. Petitioners moved to Via Cassia 1951 on November 10, 1972, and continue to reside there.

14. Petitioners were in business as Bernardo Sandals. They sold their interest to R.G. Barry Corp., who employed them as consultants in Italy. Petitioners did not return to New York during 1973.

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. The burden is upon any person asserting a change of domicile to show that the necessary intention existed [20 NYCRR 102.2(d)(2)]. Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York is domiciled here regardless of whether he has become a United States citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed domicile

unless it is clearly shown that he intends to remain there permanently. [20 NYCRR 102.2(d)(3)].

B. That petitioners have failed to show by clear and convincing evidence that they intended to change their domicile to Italy. Petitioners have maintained their bank accounts and brokerage accounts in New York. They own property in New York. They maintain contact with the United States because of the political situation in Italy. Therefore, petitioners did not change their domicile from New York.

C. That 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 [20 NYCRR 102.2(b)].

D. That, since petitioners are domiciled in New York, they are residents of New York for tax year 1972 because they failed to meet the three requirements cited, supra. They are nonresidents of New York for tax year 1973, because they did meet the three requirements cited, supra.

E. That petitioners, as nonresidents of New York, performed no services in New York State during 1973. Compensation for personal services rendered by a nonresident individual wholly without the state is not included in their New York adjusted gross income [20 NYCRR 131.4(a)]. Therefore, petitioners' wage income is not taxable and they are due a refund of the New York State withholding tax for 1973.

F. That the petition of Dino Sonnino and Eva Sonnino for 1973 is granted based on Conclusions of Law "D" and "E", supra and the Notice of Deficiency

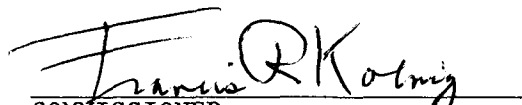
dated July 26, 1976 is cancelled. The petitions of Dino Sonnino and Eva Sonnino for 1972 are denied and the notices of deficiency dated November 24, 1975 are sustained.


DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER