

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alfred Trucios :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Year 1977. :

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Alfred Trucios, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred Trucios
c/o Grolier, Inc.
Sherman Tpke.
Danbury, CT 06816

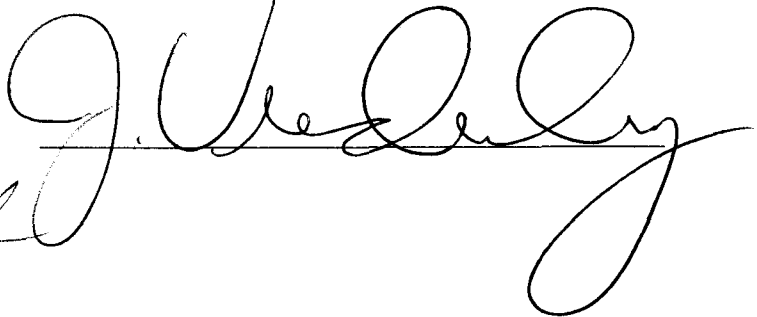
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 3, 1982

Alfred Trucios
c/o Grolier, Inc.
Sherman Tpke.
Danbury, CT 06816

Dear Mr. Trucios:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALFRED TRUCIOS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York for
the Year 1977.

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DECISION

Petitioner, Alfred Trucios, c/o Grolier, Inc., Sherman Turnpike, Danbury, Connecticut 06816, 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 Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 27485).

On February 3, 1982, petitioner waived his right to a hearing and requested that a decision be rendered by the State Tax Commission based upon the record as contained in his file. Upon review of the file, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner changed his domicile from New York to Mexico during the 1977 tax year.

FINDINGS OF FACT

1. Petitioner, Alfred Trucios, timely filed a New York State and City income tax resident return for the year 1977 wherein he indicated that he was a resident of New York State and New York City from January 1, 1977 to June 26, 1977. Said return claimed a refund of \$3,759.60.

2. The Audit Division did not approve the refund as claimed on petitioner's 1977 return and, in lieu thereof, issued a Notice of Deficiency for said year dated May 29, 1979, assessing additional New York State and New York City personal income tax of \$554.90 and \$201.96, respectively, for a total tax due of \$756.86. The Notice of Deficiency was based on an explanatory Statement of Audit Changes dated December 13, 1978, wherein the Audit Division held that petitioner did not change his domicile to Mexico in 1977 and was, therefore, taxable as a full-year resident individual.

3. During the tax year in question, petitioner was employed by Grolier International, Inc. (hereinafter "Grolier") as executive vice-president in charge of Latin American operations. Effective March 31, 1977, Grolier moved its offices from New York City to Danbury, Connecticut and it became necessary for petitioner, who owned a home in Flushing, New York, to commute two (2) hours each way to get back and forth to work. In order to avoid the rigorous commuting schedule or a possible move closer to Grolier's new offices, petitioner and Grolier worked out an arrangement whereby petitioner moved his office to Mexico. Mr. Trucios first arrived in Mexico on June 27, 1977.

4. In June, 1977 petitioner placed his house in Flushing, New York up for sale, vacated the premises and sent all his household furnishings to Mexico. The house in Flushing, New York was not sold until October, 1978.

5. Upon his arrival in Mexico, petitioner entered into a one-year lease for the rental of a house and enrolled his children in school in Mexico. On May 5, 1978, petitioner married a Mexican national and in March, 1979 he purchased a home in Mexico.

6. Petitioner entered Mexico on a tourist visa and subsequently obtained an FM-3 visa, which was renewable every six (6) months. Petitioner did not obtain a resident immigrant visa since said visa limited travel outside Mexico to ninety (90) days per year. This limitation was too restrictive since petitioner's position with Grolier required him to travel outside of Mexico approximately forty-five percent (45%) of the time.

7. Petitioner did not have a written employment contract with Grolier which specified the duration of his employment in Mexico. In a letter dated January 8, 1979, petitioner indicated that "The length of stay (in Mexico) in my own mind is forever, however, as an employee I am subject to the dictates of my company (Grolier)". On March 6, 1980 petitioner was appointed "Resident Manager" of Grolier's operations in Venezuela. Petitioner thereafter has leased his home in Mexico and rented a house in Venezuela.

8. Petitioner has not relinquished his status as a United States citizen and he did not file an income tax return with Mexico for the year 1977. Mr. Trucios has no will, however, he did pay a 1978 Federal income tax assessment via his personal check dated September 12, 1979, drawn on the Bankers Trust Company, 345 Park Avenue, New York, New York. Petitioner's 1978 and 1979 U.S. Individual Income Tax Returns claimed miscellaneous deductions for dues paid to the New York State Society of Certified Public Accountants.

9. Petitioner filed an Amended U.S. Individual Income Tax Return for the year 1977 wherein Federal adjusted gross income was reduced by \$2,876.03 to reflect an exclusion, under section 911 of the Internal Revenue Code, for income earned abroad. The reduction in Federal income, which was approved by the

Internal Revenue Service, was not claimed on petitioner's New York return nor was said reduction taken into consideration in the Notice of Deficiency dated May 29, 1979.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T 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 (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That to change one's domicile 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. Klein v. State Tax Comm., 55 A.D.2d 982, aff'd., 43 N.Y.2d 812; Bodfish v. Gallman, 50 A.D.2d 457.

C. That while the evidence to establish the requisite intention to effect a change of domicile must be clear and convincing, Klein v. State Tax Comm., supra; Bodfish v. Gallman, supra, the question is not whether the taxpayer intends to leave New York forever, but whether he intends to make the new location his "permanent home...with the range of sentiment, feeling and permanent association with it." Starer v. Gallman, 50 A.D.2d 28.

D. That domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests on the party who alleges a change. Bodfish v. Gallman, supra.

E. That the facts which weigh in petitioner's favor, i.e., his marriage to a Mexican national and his purchase of a home in Mexico, were events which

occurred after the close of the tax year in question. That petitioner's continued use of a New York checking account, his retention of United States citizenship, his membership in a New York State professional society, his failure to pay any income tax to Mexico and the fact that his move to Mexico was connected with his employment and that petitioner remained "...subject to the dictates of my company" all weigh heavily against petitioner.

F. That petitioner has failed to meet his burden of proof imposed under section 689(e) of the Tax Law to show he established a permanent home in Mexico in 1977. Accordingly, petitioner remained a domiciliary of New York State and New York City for the entire year of 1977 and the Audit Division has properly taxed him as a full-year resident individual in accordance with the meaning and intent of section 605(a)(1) of the Tax Law then in effect.

G. That petitioner's 1977 New York State and New York City personal income tax liability is to be recomputed to reflect the \$2,876.03 reduction in Federal adjusted gross income as set forth in Finding of Fact "9", supra.

H. That the petition of Alfred Trucios is granted to the extent indicated in Conclusion of Law "G", supra, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER