

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Alan & Margaret Uhl

:

:

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 :
1974 & 1975.

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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Alan & Margaret Uhl, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan & Margaret Uhl
50-14 W. Azeele
Tampa, FL 33512

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
23rd day of April, 1982.

Annice R. Hayden

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Alan & Margaret Uhl : 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 :
1974 & 1975.

State of New York
County of Albany

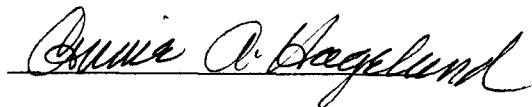
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Howard W. Pollack the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

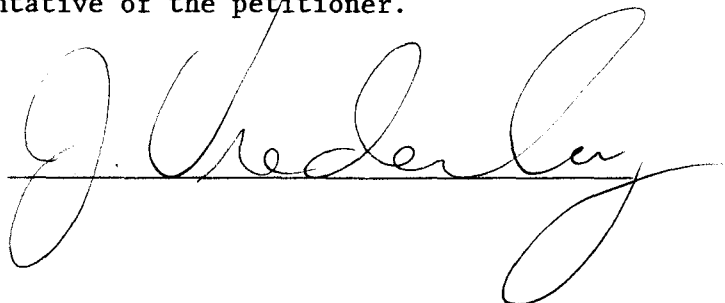
Howard W. Pollack
Wolf & Wolf
38 W. 32nd St.
New York, NY 10001

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
23rd day of April, 1982.


Annie A. Bagelund


Jay Vredenburg

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

April 23, 1982

Alan & Margaret Uhl
50-14 W. Azeele
Tampa, FL 33512

Dear Mr. Uhl:

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
Howard W. Pollack
Wolf & Wolf
38 W. 32nd St.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALAN UHL and MARGARET UHL : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1974 and 1975. :
:

Petitioners, Alan Uhl and Margaret Uhl, 50-14 W. Azeele, Tampa, Florida 33512, 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 1974 and 1975 (File Nos. 18308 and 20555).

A formal hearing was held before Stanley Buchsbaum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1980 at 9:15 A.M. Petitioners appeared by Wolf & Wolf (Howard W. Pollack, PA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioners were New York residents or nonresidents for income tax purposes during 1974; and if nonresidents, whether they properly allocated wage income between sources within and without New York State.

II. Whether petitioners properly allocated wage income to sources within and without New York State on their 1975 nonresident income tax return.

FINDINGS OF FACT

1. Petitioners, Alan Uhl and Margaret Uhl, filed joint New York State income tax nonresident returns for 1974 and 1975. On each return petitioners

allocated one-half of Alan Uhl's salary income to New York, based on 149 days worked in New York out of 298 days worked over-all in each year.

2. The 1974 return had attached to it five W-2 forms, issued to Alan Uhl by five different service stations located in various parts of Queens, New York, showing total wages or compensation of \$56,600.00. The 1975 return had attached to it five W-2 forms from the same service stations showing total wages or compensation of \$21,300.00.

3. On September 30, 1975, the Income Tax Bureau wrote to Alan Uhl requesting intra alia, a variety of information concerning the alleged change of domicile from New York to Florida.

4. On January 24, 1977, a Statement of Audit Changes for 1974 was sent to petitioners. It stated that, since there had been no response to the letter of September 30, 1975, they were considered to be New York State residents and all of their 1974 income was taxable to New York. Additional tax was asserted in the amount of \$1,824.15, plus interest.

5. On October 31, 1977, a Statement of Audit Changes for 1975 was sent to petitioners. It stated that, since they failed to substantiate wage allocation to New York State, their tax had been recomputed. Additional tax was asserted in the amount of \$668.74, plus interest.

6. Notices of deficiency for 1974 and 1975, were sent to petitioners on the same dates and in the same amounts as the statements of audit changes.

7. The petition with respect to both 1974 and 1975 states that Alan Uhl resides in Florida and conducts business there; that he is required to be in New York half of each year to administer his New York business; and that, in earning his salary from New York corporations, he conducts business in New York

by telephone calls from Florida to his New York subordinates. A perfected petition for both years states that petitioners are nonresidents of New York.

8. Petitioners purchased a house at 694 Autumn Road, Spring Hill, Florida, on July 31, 1973.

9. Petitioner Alan Uhl sold his house at 60-11 Broadway, Woodside, Queens, New York in October, 1973.

10. In 1974, petitioners applied for and obtained a "homestead exemption" on their Florida house.

11. During the second and third quarters of the 1973-74 school year, two of petitioners' children attended Hernando High School in Brooksville, Florida.

12. Petitioner Alan Uhl filed a petition for divorce from petitioner Margaret Uhl in a Florida Court on January 20, 1977, and a Final Judgment of Dissolution of Marriage was entered on March 28, 1977. In connection therewith he swore to a Declaration of Domicile and Citizenship of the State of Florida, stating that he had been a resident of Florida since July 1, 1973, and that "I have no intention to return to my former domicile" and named two businesses he established in Florida without giving the dates the businesses were established. Florida law requires anyone seeking a dissolution of marriage in that state to be a continuous resident of that state for more than six months before filing the petition.

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)]. Petitioners have shown that they changed their domicile from New York to Florida prior to 1974.

B. That petitioners, Alan Uhl and Margaret Uhl, although nonresidents of New York State for 1974 and 1975, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they were entitled to an allocation of New York source income within the meaning and intent of Tax Law Section 632 and 20 NYCRR 131.


C. That the petition of Alan Uhl and Margaret Uhl is denied and the notices of deficiency issued January 24, 1977 and October 31, 1977 are sustained, together with such interest as may be lawfully due.

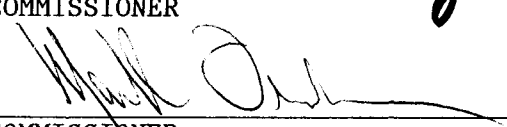
DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER