

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Anthony P. Vogelpoel	:	
and Ilse L. Vogelpoel	:	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 Year	:	
1972.	:	

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 Anthony P. Vogelpoel, and Ilse L. Vogelpoel the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony P. Vogelpoel
and Ilse L. Vogelpoel
7896 Red Rox Dr.
Manlius, NY 13104

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.

Cornie A. Heyland

Jay Vredenburg

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

June 11, 1982

Anthony P. Vogelpoel
and Ilse L. Vogelpoel
7896 Red Rox Dr.
Manlius, NY 13104

Dear Mr. & Mrs. Vogelpoel:

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	:	DECISION
ANTHONY P. VOGELPOEL AND ILSE L. VOGELPOEL	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1972.	:	

Petitioners, Anthony P. Vogelpoel and Ilse L. Vogelpoel, 7869 Red Fox Drive, Manlius, New York 13104, 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 1972 (File No. 01188).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on March 17, 1980 at 2:45 P.M. Petitioner Anthony P. Vogelpoel appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries of New York State during the entire year 1972.

FINDINGS OF FACT

1. Petitioners, Anthony P. Vogelpoel and Ilse L. Vogelpoel, filed a New York State income tax nonresident return for 1972, on which they indicated their period of New York State residence as January 1, 1972 to November 9, 1972.

2. The Income Tax Bureau held that petitioners were domiciliaries of New York for all of 1972; therefore, they were taxable on all income earned

during said year. Other adjustments made to petitioners' tax return pursuant to sections 615(c)(1) and 615(d)(1) of the Tax Law are not at issue and petitioners remitted \$17.00 on November 1, 1973 in payment of said adjustments. A Notice of Deficiency was issued on July 29, 1974 for \$340.79 in personal income tax, plus \$10.89 in interest, less overpayment shown on return of \$228.00 and previous remittance of \$17.00 which was applied against their deficiency, leaving a balance still due of \$106.68.

3. Petitioner Anthony P. Vogelpoel was born in Amsterdam, Holland on April 7, 1918. In 1950, petitioner Anthony P. Vogelpoel became a landed immigrant of Canada and later became a Canadian citizen. In 1960, his then Canadian employer sent him to Massachusetts to work. He sold his home in Canada and moved all his possessions to Massachusetts. In 1964, petitioner Anthony P. Vogelpoel took a position with a New York State employer and moved from Massachusetts to West Islip, New York.

4. In 1966, petitioner Anthony P. Vogelpoel acquired his United States citizenship based on a job requirement in that his employer had United States government contracts.

5. In 1966, petitioner Anthony P. Vogelpoel married the now Ilse L. Vogelpoel. Petitioner Ilse L. Vogelpoel is a West German citizen and did not acquire United States citizenship.

6. November 1, 1972, petitioner Anthony P. Vogelpoel obtained a position with Philips Electrologica GmbH in Siegen, West Germany. Petitioners sold their home in New York State and moved all of their possessions to West Germany. The petitioners did not purchase a home in West Germany; instead, they leased a home on a five year lease.

7. Petitioners' child attended a West German school. Petitioners resigned from all organizations and clubs before departing from the United States in 1972. Petitioners did not maintain any bank accounts in United States after departing. Both petitioners obtained West German driver's licenses and did not renew their New York driver's licenses. Petitioners had a will drawn in West Germany.

8. Petitioner Anthony P. Vogelpoel secured a permanent visa (not required for Ilse L. Vogelpoel being a West German citizen) and a five year renewable work permit. Petitioner Anthony P. Vogelpoel did not acquire West German citizenship in 1972. Germany maintains a six year resident requirement before German citizenship can be acquired.

9. Since entering West Germany in November of 1972, petitioner became subject to and paid taxes to West Germany.

10. Petitioners' intention at the time of their removal from New York State was not to return to the United States, but to live permanently in West Germany. Petitioners returned to the United States in April of 1976.

CONCLUSIONS OF LAW

A. That petitioners acquired a foreign domicile in West Germany on November 1, 1972. A United States citizen (in this case Anthony P. Vogelpoel) can change his domicile instantly, for only two elements are necessary. He must take up residence at the new domicile and he must intend to abandon his prior domicile and to adopt the new place of residence as his fixed, true and permanent home to which he would have the intention of returning whenever absent (Berhalter v. Irmisch, 75 F.R.D. 539). In order to effect a change of domicile, it is unnecessary that one never again set foot in his former domicile (Rosenstiel v. Rosenstiel, 368 F. Supp. 51, affirmed 503 F. 2d 1397). A change

of residence for even a short time with the intention in good faith to change the domicile is sufficient (Matter of Newcombe, 192 N.Y. 238 Gromel v. Gromel, 22 Misc 2d 33). The question of change of domicile is one of fact, not of law, and frequently depends on a variety of circumstances (Matter of Brunner, 41 N.Y. 2d 917, 918). The acts of petitioners when they took up residence in their rented home in West Germany confirmed their stated intentions to make that residence their domicile. They completely abandoned their New York domicile. It has clearly been shown that petitioners changed their domicile in 1972 from New York to West Germany.

B. That the Audit Division is directed to recompute the Notice of Deficiency issued on July 29, 1974 allowing income and deductions in accordance with section 654 of the Tax Law and including therein the adjustments previously agreed upon pursuant to sections 615(c)(1) and 615(d)(1) of the Tax Law.

C. That the petition of Anthony P. Vogelpoel and Ilse L. Vogelpoel is granted to the extent indicated in Conclusion of Law "B"; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER