

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert & Lillian Wilbur :
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 :
1976. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

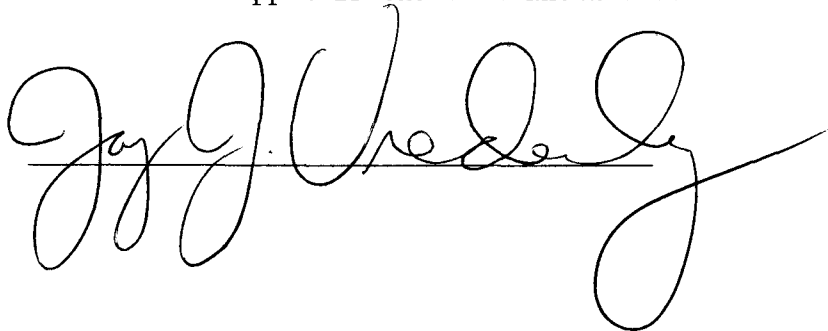
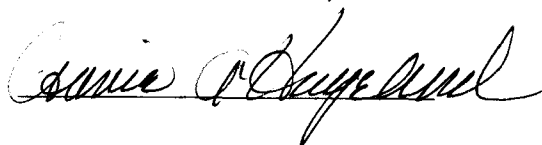
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of 690 & 1312 by certified mail upon Robert & Lillian Wilbur, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Lillian Wilbur
P.O. Box N 3935
Nassau, Bahamas

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

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In the Matter of the Petition :
of :
Robert & Lillian Wilbur :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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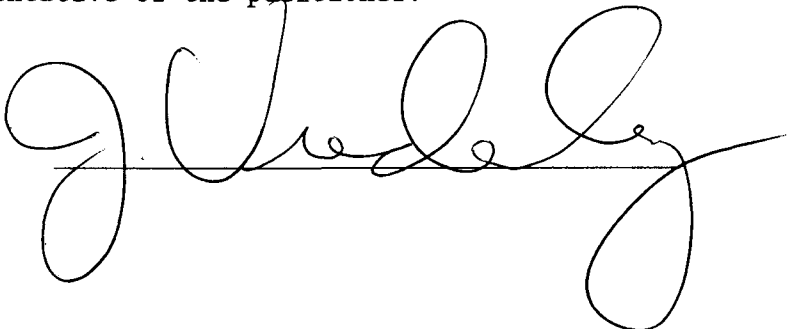
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of 690 & 1312 by certified mail upon Donald Toyntor the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald Toyntor
Price, Waterhouse & Co.
530 Fifth Ave.
New York, NY 10036

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
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

Robert & Lillian Wilbur
P.O. Box N 3935
Nassau, Bahamas

Dear Mr. & Mrs. Wilbur:

Please take notice of the 690 & 1312 of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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 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
Donald Toyntor
Price, Waterhouse & Co.
530 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT and LILLIAN WILBUR	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

Petitioners, Robert Wilbur and Lillian Wilbur, P.O. Box N3935, Nassau, Bahamas, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 25584).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1981 at 3:15 P.M. Petitioners appeared by Price, Waterhouse & Co. (Donald Tayntor, C.P.A.) The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the Audit Division should have considered petitioners to be domiciliaries of Florida rather than New York during the year in issue.

FINDINGS OF FACT

1. Petitioners, Robert J. Wilbur and Lillian L. Wilbur, filed a New York State Income Tax Nonresident Return on Form IT-203/209 and a New York State Income Tax Resident Return on Form IT-201/208 for 1976. They also filed a United States Individual Income Tax Return for said year. On each of these returns petitioners listed Nassau, Bahamas as their address.

2. Petitioners attached to their New York State income tax returns a Schedule for Change of Resident Status which stated that petitioners were residents of New York from January 1, 1976 to April 15, 1976. On this schedule petitioners allocated their income, itemized deductions, and exemptions attributable to the period they were residents and nonresidents.

3. On September 25, 1978 the Audit Division issued a Statement of Audit Changes to petitioners showing personal income tax due of \$8,664.82, plus interest of \$1,065.43, for a total due of \$9,730.25. Said statement was issued on the grounds that petitioners had not changed their domicile from New York State and that they had not satisfied the criteria to file as nonresidents. The Statement of Audit Changes also proposed modifying petitioners' itemized deductions pursuant to section 615(c)(4) of the Tax Law for allocable expenses attributable to petitioners' items of tax preference in excess of the specific deduction. Accordingly, on March 30, 1979, a Notice of Deficiency was issued asserting personal income tax liability of \$8,664.82, plus interest of \$1,438.73, for a total due of \$10,103.55.

4. In January, 1972 Mr. Wilbur bought a condominium in Lighthouse Point, Florida with the intention of eventually retiring there.

5. On April 23, 1974 Mr. Wilbur established a trust with Morgan Guaranty Trust Company of New York ("Morgan Guaranty") and on or about the same time, executed reciprocal wills with his wife. In order to comply with Mr. Wilbur's understanding of Florida law where he intended to retire, the wills appointed individual executors and executrixes.

6. In 1975 petitioners contracted for the purchase of a condominium in Westhampton Beach, New York with the intention that upon retirement petitioners would reside in Florida and spend summers in Westhampton Beach.

7. In 1976 petitioner was employed by Morgan Guaranty. In February, 1976 Morgan Guaranty offered petitioner the position of Vice-President and General Manager of the Morgan Guaranty branch in Nassau, Bahamas with the understanding that he would have the position for a minimum of three to five years. Mr. Wilbur accepted this position with the intention that upon completion of this assignment he would retire.

8. Upon accepting the new position Mr. Wilbur attempted to obtain a release from the contract to purchase the property in Westhampton Beach but was unsuccessful. On April 26, 1976 petitioners took title to the Westhampton Beach property. Initially the Westhampton Beach property was rented. In June, 1977 petitioners sold the property to the tenant.

9. On April 15, 1976 petitioners left New York and on April 19, 1976 they arrived in Nassau. Prior to leaving New York Mr. Wilbur resigned his memberships and positions with several New York organizations.

10. On April 15, 1976 petitioners executed a document which declared that Florida was their State of domicile and residence. Petitioners stated on this document:

"I have sold my home in Babylon, New York. I have owned my Florida property since 1972. My employer has transferred me effective April 15, 1976 from New York City to Nassau Bahamas, where my family will take up residence. Upon completion of this assignment I do not intend to return to New York, but expect to retire and reside permanently in Florida."

11. On April 15, 1976 petitioners registered to vote in Florida.

12. On April 16, 1976 Mr. Wilbur obtained a Florida drivers license.

13. On or about June 25, 1976 petitioners completed the closing on their home in Babylon, New York.

CONCLUSIONS OF LAW

A. That in view of the location of Mr. Wilbur's residence, employment, and associations, Mr. Wilbur was a domiciliary of New York prior to 1976. That Mrs. Wilbur was also a domiciliary of New York prior to 1976 since the domicile of a wife ordinarily follows that of her husband [20 NYCRR 102.2(d)(5)].

B. That once a domicile is established it will continue until the individual moves to the new location with the bona fide intention of making the new location his fixed and permanent home [20 NYCRR 102(d)(2)].

C. That since petitioners have not established that they moved to Florida in 1976, they have not sustained the burden of proof imposed by section 689(e) of the Tax Law of showing that they changed their domicile to Florida during the year in issue.

D. That the petition of Robert and Lillian Wilbur is hereby denied.

DATED: Albany, New York

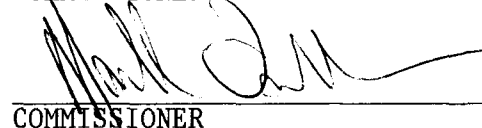
STATE TAX COMMISSION

DEC 03 1982

ACTING PRESIDENT




COMMISSIONER


COMMISSIONER