

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Eric F.L. Backer : 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 :
1975.

State of New York
County of Albany

David Parchuck, 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 February, 1983, he served the within notice of Decision by certified mail upon Eric F.L. Backer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eric F.L. Backer
25 Cliffwood
Lenox, MA 01240

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 February, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 11, 1983

Eric F.L. Backer
25 Cliffwood
Lenox, MA 01240

Dear Mr. Backer:

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	:	
	:	
ERIC F. L. BACKER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

Petitioner, Eric F. L. Backer, 25 Cliffwood Street, Lenox, Massachusetts 01240, 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 1975 (File No. 25551).

On April 3, 1981, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner was domiciled in, and a resident of the State of New York during the entire year 1975.

FINDINGS OF FACT

1. Eric F. L. Backer (hereinafter petitioner) filed a separate New York State Income Tax Resident Return for the period January 1, 1975 through July 11, 1975. For the balance of taxable year 1975 no New York State income was reported per a Schedule for Change of Resident Status form filed in conjunction therewith.

2. On May 24, 1978, the Audit Division issued a Statement of Audit Changes to petitioner wherein he was held to be a New York State resident for the entire year 1975. Accordingly, a Notice of Deficiency was issued against

petitioner on December 15, 1978 asserting additional personal income tax of \$267.16, plus interest of \$60.60, for a total due of \$327.76.

3. Petitioner argued that throughout his life (including the year at issue herein) he has consistently been a bona fide domiciliary of Great Britain. He was born and raised a British citizen in British Guiana and lived for many years in England. Each year petitioner claimed that he has returned to England, where he received his higher education and professional background. His daughters were educated in England. He claimed that he has owned a home in England for many years. However, no documentary evidence was submitted to support petitioner's claim.

4. Petitioner listed his residences from birth to present as follows:

1913-1935	British Guiana (British citizenship, British education, and frequent visits to the parent country of Great Britain, from which my father had come.)
1935-39	Brazil - 4 years (worked for British firm, ICI Ltd.)
1939-46	British army - 6 years, based in British East Africa, Burma and England
1946-49	Brazil - 3 years (worked for British firm, ICI, Ltd.)
1949-52	Canada - 3 years
1952-53	England - 1 year
1953-54	Uganda - 1 year
1954-56	Canada and the United States (New York State)
1956-57	England - 1 year
1957-58	Columbia, South America - 1 year Pennsylvania (3 months)
1958-61	Middle East (Iraq, Iran) and England - 3 years
1961-63	Liberia - 2½ years
1963-69	England - 6 years

1969-75	United States (based in New York City) with frequent trips abroad for international firm - 6 years
1975-77	Iran - 2 years
1977-78	Greece - 1½ years
1978-79	8 months United States (New York State)
1979-80	New Jersey, Massachusetts, New York State (while waiting for Pakistani job to materialize) - 1 year
1980-to the present	Pakistan

5. From sometime in 1969 through July 11, 1975, petitioner resided in New York State. He stated that throughout this period he was waiting for his employer, an international scholarship organization, to assign him abroad. During this period, he went on frequent working visits to Costa Rica, Chile, Ecuador, Argentina, Brazil and France. After several possibilities fell through, petitioner terminated his employment and joined another company which assigned him overseas to Iran.

6. During the year at issue, petitioner was a United States Citizen. It is not known in what year he became a United States citizen.

7. Petitioner resided in Iran from July 1975 through July 1977, at which time he was transferred to Greece. Petitioner obtained residence permits in both Iran and Greece.

8. Petitioner is currently residing in Pakistan.

9. Petitioner filed a 1975 joint Federal return with his wife, Dorothy Backer, who, during such year, was a resident of Pennsylvania.

10. Petitioner's 1975 Wage and Tax Statement from American Field Service, Inc., New York City, listed his address as 372 Central Park West, New York, New York 10025. No evidence was submitted with respect to this address or whether

he owned or rented it. Further, there is no evidence as to the disposition of his residence, when he left New York in July of 1975.

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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time. [20 NYCRR 102.2(d)(2)]

Domicile is not dependent on citizenship; that is, an immigrant who 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 his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. [20 NYCRR 102.2(d)(3)] The lack of documentary evidence herein leads to the conclusion that petitioner had not sustained his burden of proof to show he was domiciled in Great Britain. Accordingly, petitioner has been properly held to be a domiciliary of New York State for taxable year 1975.

B. That petitioner, Eric F. L. Backer, has failed to sustain his burden of proof required, pursuant to section 689(e) of the Tax Law, to show that he was not a resident of New York State within the meaning and intent of section 605(a)(1) of the Tax Law.

C. That the petition of Eric F. L. Backer is denied and the Notice of Deficiency dated December 15, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

Robert A. Barlow
ACTING PRESIDENT

Francis R. Koeng
COMMISSIONER

[Signature]
COMMISSIONER