

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Warren W. Davison	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Years	:	
1975 - 1977.	:	

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Warren W. Davison, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Warren W. Davison
8266 Warbler Way, Apt. C3
Liverpool, NY 13088

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
6th day of May, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Tax under Article 22 of the Tax Law for the Years :
1975 - 1977. :

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Michael J. Kawa the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael J. Kawa
Blitman & King
500 S. Salina St., The 500 Bldg., Suite 1100
Syracuse, NY 13202

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
6th day of May, 1983.

David Parchuck

Carmine A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Warren W. Davison
8266 Warbler Way, Apt. C3
Liverpool, NY 13088

Dear Mr. Davison:

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
Michael J. Kawa
Blitman & King
500 S. Salina St., The 500 Bldg., Suite 1100
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WARREN W. DAVISON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 through 1977.	:	

Petitioner, Warren W. Davison, 8266 Warbler Way, Apartment C-3, Liverpool, New York 13088, 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 1975 through 1977 (File No. 26841).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York on June 16, 1982 at 10:45 A.M. Petitioner appeared by Blitman and King (Michael J. Kawa, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner was a domiciliary of Saudi Arabia during the periods in issue and, if not, whether petitioner was a nonresident of New York for income tax purposes for 1976.

FINDINGS OF FACT

1. Petitioner filed a New York State Income Tax Resident Return for the year 1975. Attached to this return was a Schedule for Change of Resident Status which stated that petitioner was a resident of New York from January 1, 1975 to December 1, 1975 and a non-resident for the remainder of the year. On

this return petitioner allocated his income and exemptions on the basis of the number of months he was a resident.

2. Petitioner filed a New York State Income Tax Resident Return for the year 1976. Attached to this return was a Schedule for Change of Resident Status which did not attribute any portion of the year to New York State residency; however, petitioner reported, with the exception of wages of \$30,848.37, the income and losses as shown on his federal income tax return for 1976.

3. Petitioner filed a New York State Income Tax Resident Return for the year 1977. On the Schedule for Change of Resident Status, which was attached to this return, petitioner reported that he was a resident of New York from July 1, 1977 to December 31, 1977. Therefore, petitioner allocated his income, standard deduction, and personal exemptions on the basis of the number of months he was a resident.

4. The home address reported by petitioner on his New York State income tax resident returns for 1975, 1976 and 1977 was in Celoron, New York. This address, however, was petitioner's parents' address. Petitioner did not reside at his parents home. Petitioner used this address because of the problems he encountered in receiving important mail due to the frequency of his moving to new job locations. The wage and tax statements attached to the income tax returns for 1975 and 1976 listed petitioner's address as a post office box in Rochester, New York. This address was the post office box of petitioner's employer. The wage and tax statement for 1977 listed petitioner's address as being in Liverpool, New York. This was petitioner's actual residence.

5. On January 24, 1979, the Audit Division issued a Notice of Deficiency to petitioner which asserted a deficiency of personal income tax for the years 1975, 1976 and 1977 in the amount of \$6,489.09 plus interest of \$429.70 for a

total amount due of \$6,918.79. The Statement of Audit Changes, which was issued on October 24, 1978, stated, in substance, that removal from New York for a limited period, even of long duration, does not cause a change of domicile. Therefore, petitioner was held to be taxable as a resident.

6. On April 4, 1979, petitioner filed amended returns for the years 1975, 1976, and 1977 which purported to properly reflect petitioner's resident and non-resident status during the years in issue.

7. Petitioner was born and raised in New York State.

8. In 1957, petitioner began working for S. J. Groves & Sons Company ("Groves") as a construction engineer. In 1959, petitioner left his employment with Groves. In 1961, petitioner resumed his employment with Groves and from this time until 1975 he was employed on highway construction projects as an engineer, job manager, or superintendent. Petitioner would move to a new location approximately every two years because of the nature of his employment. However, the majority of the places in which petitioner resided while employed by Groves were located in New York State.

9. In 1974, petitioner was divorced. He did not obtain custody of his children.

10. In the summer of 1975, petitioner was working as a project superintendent for Groves in the Rochester, New York area. At this time, a vice-president of Groves asked petitioner to consider a position of manager of a new company that Groves was forming in Saudi Arabia with a Saudi partner. Petitioner accepted this position but stated that he could not leave for Saudi Arabia until the beginning of 1976 because he did not want to leave the project he was supervising.

11. In or about September, 1975 petitioner was advised that the Saudi partner was becoming impatient. As a result, petitioner was called upon to leave for Saudi Arabia on brief notice.

12. When petitioner left for Saudi Arabia it was with the understanding that he would be there for a minimum of five years. Petitioner did not have a written employment contract and a fixed term for being in Saudi Arabia was not agreed upon.

13. When petitioner found out he was going overseas he opened a savings account in Rochester, New York. Petitioner planned to have his wages deposited into this account and then draw on these funds while in Saudi Arabia as needed. Subsequently, petitioner gave a friend of his a power of attorney. This individual opened up a savings account on petitioner's behalf in Lockport, New York. Thereafter, all of petitioner's wages were deposited at the bank in Lockport. Petitioner testified that it was a common practice for United States citizens working in Saudi Arabia to maintain bank accounts in the United States for this purpose.

14. Petitioner owned two race horses prior to the time he left New York. Petitioner disposed of one of the race horses prior to leaving New York. He had sought to sell the other horse but decided not to do so because of the wishes of his daughter. Therefore, petitioner had the horse boarded in Cuba, New York so that his daughter would have the horse available for riding.

15. Petitioner had rented a furnished apartment in Rochester before going to Saudi Arabia.

16. In November of 1975, petitioner went to Saudi Arabia. Upon arriving there petitioner became employed as the general manager of Arab-American

Constructors ("Constructors"). Constructors was a company which was owned 50% by Groves and 50% by the Saudi partner.

17. Initially, petitioner entered Saudi Arabia through a visa which had to be renewed periodically. After four or five months, with the help of the Saudi partner, petitioner was able to obtain a permanent visa, which did not have to be renewed.

18. While in Saudi Arabia, petitioner resided with other associates in a villa leased by Constructors. In September 1976, petitioner's younger son went to live with petitioner in Saudi Arabia. Subsequently, petitioner enrolled his son in a private academy.

19. When petitioner arrived in Saudi Arabia he obtained a temporary driver's license. Later, he was able to acquire a permanent Saudi driver's license.

20. In October of 1976, petitioner made a trip to Syracuse, New York and from there to Harrisburg, Pennsylvania. This trip, which lasted approximately twelve days, was made for the purpose of delivering contract prints on a prospective job to an office of Groves.

21. In 1977, Constructors was suffering difficulties because of a change in economic conditions. Petitioner concluded that since business was slow he would travel to the United States in order to: personally deliver some prints to Grove's home office in Minneapolis, take his son to see his mother, and take a vacation.

22. In June of 1977, petitioner returned to the United States. Upon his arrival in the United States, petitioner took his son back to his mother. Thereafter, petitioner went to Minneapolis. While he was in Minneapolis, petitioner inquired about positions in various locations in the United States.

As a result, Groves offered and petitioner accepted a position in the Syracuse, New York area. Petitioner had not resided in the Syracuse area previously.

23. When petitioner initially returned to the United States in 1977 he was under the impression he would return to Saudi Arabia.

24. Petitioner did not vote during the years in issue.

25. Petitioner retained his New York State Land Surveyer's license during the period in issue.

CONCLUSIONS OF LAW

A. That petitioner was a domiciliary of New York prior to his departure for Saudi Arabia.

B. That once a domicile is established it will continue "...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)).

C. That "...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)).

D. That in Matter of Bodfish v. Gallman, (50 A.D.2d 457, 458) the Court stated:

"To change one's domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residence in the new locality (Matter of Newcomb, 192 NY 238, 250-251). The test of intent with respect to a purported new domicile has been stated as 'whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it' (Matter of Bourne, 181 Misc. 238, 246, aff'd. 267 App. Div. 876, aff'd. 293 N.Y. 785)."

E. That in view of the fact that petitioner did not at anytime intend to remain in Saudi Arabia permanently, he failed to establish by clear and convincing evidence that he had the range of sentiment, feeling and permanent association needed to establish a new domicile (See Matter of Bodfish v. Gallman, supra).

Therefore, petitioner remained a domiciliary of New York during the years in issue.

F. That 20 NYCRR 102.2(b) (which corresponds with Tax Law §605[a][1]) provides, in part:

"(b) Certain persons not deemed residents although domiciled in New York. Any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State..."


Since petitioner satisfied each of the criteria of 20 NYCRR 102.2(b) for the year 1976, petitioner is deemed not to be a resident of New York for the year 1976.

G. That the petition of Warren W. Davison is granted to the extent of Conclusion of Law "F" and is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER