

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Francis D. & Beatrice M. Harrington :
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. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Francis D. & Beatrice M. Harrington, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis D. & Beatrice M. Harrington
c/o 69 Fawn Hill Rd.
Upper Saddle River, NJ 07458

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
8th day of July, 1983.

Connie A. Hagelund

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Francis D. & Beatrice M. Harrington
c/o 69 Fawn Hill Rd.
Upper Saddle River, NJ 07458

Dear Mr. & Mrs. Harrington:

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 Law 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
Building #9 State Campus
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
FRANCIS D. HARRINGTON AND BEATRICE M. HARRINGTON
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Francis D. Harrington and Beatrice M. Harrington, 40-69 Fawn Hill Road, Upper Saddle River, New Jersey 07458, 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. 25416).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 8, 1981 at 10:45 A.M. Petitioner Francis D. Harrington appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in, and residents of the State of New York during the entire taxable year 1975.

FINDINGS OF FACT

1. Petitioners Francis D. Harrington and Beatrice M. Harrington timely filed a joint New York State Income Tax Resident Return for the year 1975.

2. On February 2, 1979 the Audit Division issued a Statement of Audit Changes to petitioners wherein an adjustment was made to conform with federal

audit changes. Additionally, an adjustment was made reducing petitioners' claimed itemized deductions by the amount of state and local income taxes claimed on their federal return. Accordingly, a Notice of Deficiency was issued against petitioners on February 23, 1979 asserting additional personal income tax of \$693.27, plus interest of \$168.40, for a total due of \$861.67.

3. Petitioners filed as New York State residents for the entire year. However, they maintained that they filed their return erroneously. They claimed that they should have properly filed as residents only for the period March 13 through December 31, 1975, thereby rendering the net capital gain realized from the sale of their New Jersey house on March 11, 1975 as nontaxable for New York State tax purposes. Said gain, in the amount of \$5,903.00, was one of the adjustments incorporated into the total federal audit change adjustment. Accordingly, the sole objective of the hearing held herein was to determine the date on which petitioners became domiciliaries and residents of New York State.

4. Petitioners concede all adjustments with the exception of the capital gain adjustment relative to the sale of their New Jersey home.

5. For several years prior to 1975 petitioners had been domiciliaries and residents of the State of New Jersey. During the later part of 1974 Francis D. Harrington (hereinafter petitioner) had undergone surgery for a bleeding ulcer. He was advised by his physician that he should terminate his employment with St. Luke's Hospital in New York City, where he served as Vice President for Administration, in favor of employment which would offer significantly less job pressures.

6. In or about October 1974 petitioner accepted employment as Administrator of Placid Memorial Hospital in Lake Placid, New York. The terms of such employment called for a probationary period of six months, during which he could have been terminated at any time.

7. During petitioner's probationary period he lived at the Sky Top Motel in Lake Placid. Initially he lived in one room which he rented on a daily basis, but since he was unaccustomed to living in one room he subsequently changed to a two room suite which he rented on a weekly basis.

8. During petitioner's probationary period he spent each weekend, weather permitting, with his family in Harrington Park, New Jersey, where he and his wife jointly owned a home.

9. Although petitioner's probationary period had yet to be completed, he was advised by the board of directors of Placid Memorial Hospital in February 1975 that he could seek to purchase a house in the area at that time.

10. Petitioner argued that he did not actually become a New York domiciliary and resident until March 13, 1975, when he purchased a house in the Lake Placid area and physically moved there with his family and household possessions.

11. Petitioner Beatrice M. Harrington resided in their Harrington Park, New Jersey home with their three children until March 13, 1975, the date they moved into the Lake Placid home.

12. Petitioner's two school age children attended school in Harrington Park until the day prior to their move to Lake Placid.

13. During petitioner's probationary period he continued his activities as a member of the Harrington Park Zoning Board and Board of Adjustment.

14. Petitioner continued to maintain bank accounts in New Jersey during his probationary period. He opened a checking account in Lake Placid subsequent to his arrival in October or November, 1974.

15. Petitioner continued his residence and employment in Lake Placid throughout the balance of taxable year 1975.

16. Petitioner maintained that even if he were deemed a New York resident for the entire year 1975, only half the gain derived from the sale of the New Jersey home would be taxable for New York State purposes since the property was jointly owned and his wife was a New Jersey resident until March 13, 1975.

17. During the hearing the Audit Division took the position that both petitioner and his wife were New York State domiciliaries and residents during the entire taxable year 1975.

CONCLUSIONS OF LAW

A. That a domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent. (20 NYCRR 102.2(d)(1))

B. 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))

C. That the evidence adduced clearly and convincingly establishes that petitioners herein were domiciliaries and residents of the State of New Jersey until March 13, 1975, at which time they changed both domicile and residence to the State of New York. Accordingly, the gain derived from the sale of their New Jersey home on March 11, 1975 was nontaxable for New York State tax purposes.

D. That the petition of Francis D. Harrington and Beatrice M. Harrington is granted.


E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated February 23, 1979 to be consistent with the decision rendered herein.


DATED: Albany, New York

JUL 08 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER