

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rosediane Heffernan : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Article 22 of the :
Tax Law and Chapter 46, Title T of the :
Administrative Code of the City of New York for :
the Year 1979. :

State of New York
County of Albany

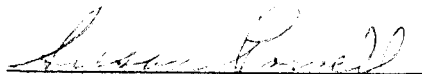
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Rosediane Heffernan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rosediane Heffernan
62 West 83rd St., #4
New York, NY 10024

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
28th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

September 28, 1983

Rosediane Heffernan
62 West 83rd St., #4
New York, NY 10024

Dear Mrs. Heffernan:

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 & 1312 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROSEDIANE HEFFERNAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law and Chapter 46, Title T of	:	
the Administrative Code of the City of New York	:	
for the Year 1979.	:	

Petitioner, Rosediane Heffernan, 62 West 83rd Street, #4, New York, New York 10024, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 34171).

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 December 6, 1982 at 1:15 P.M., with all briefs to be submitted by January 6, 1983. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether, during the full calendar year 1979, petitioner was domiciled in New York State and City and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus a resident individual under Tax Law section 605(a)(1) and section T46-105.0(a)(1) of Chapter 46, Title T of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Rosediane Heffernan (hereinafter petitioner) and her husband, Daniel Heffernan, timely filed a combined New York State Income Tax Resident Return for the year 1979 whereon, pursuant to a Schedule for Change of Resident Status attached thereto, petitioner reported only that income derived during her purported resident period of October 1, 1979 through December 31, 1979. Daniel Heffernan filed as a resident of New York for the entire year 1979.

2. On December 16, 1980, the Audit Division issued a Statement of Audit Changes wherein petitioner's tax liability was recomputed on the basis that she was a New York resident for the entire year 1979 since according to the Audit Division's records "Mrs. Heffernan became a resident of New York in September 1978" and "the domicile of the wife generally follows that of the husband". In contrast, Daniel Heffernan's 1979 liability was reduced based on an allowance of the full amount of New York itemized deductions in lieu of the prorated portion claimed. Pursuant to said statement, petitioner's computed liability was reduced by the overpayment computed for Mr. Heffernan. Accordingly, a Notice of Deficiency was issued solely against petitioner on March 18, 1981, asserting additional New York State and City personal income taxes of \$571.00, plus interest of \$43.75, for a total of \$614.75.

3. From 1970 until mid 1978, petitioner, who was born in New York, and her husband were domiciliaries and residents of the State of Washington.

4. During 1978, petitioner's employer, Northwest Airlines, was shut down by a strike. During this period petitioner's husband became unemployed. In July, 1978 they came to New York for the purpose of finding employment for Mr. Heffernan. In August 1978, Mr. Heffernan secured permanent employment in New York. Petitioner remained in New York until September, 1978, when she was

called back to her job as a flight attendant in Seattle, Washington. During the short period that both petitioner and her husband were in New York they resided in the home of friends. On petitioner's return to Seattle, Mr. Heffernan rented a furnished studio apartment in Manhattan.

5. Petitioner and her husband filed a New York State personal income tax return for 1978 in conjunction with a Schedule for Change of Resident Status whereon they indicated that they changed their residence to New York effective August, 1978.

6. With respect to her intent on returning to Seattle, Washington in September 1978, petitioner testified that "I went back to keep my job and stay there until I could get transferred to an east coast base". At the time of her return to Seattle she knew that Northwest Airlines was planning to open a base in New York and she felt that she could "stick it out for a year" in Seattle.

7. On her return to Seattle, Washington petitioner resided for about one month in the house which she and her husband owned and resided in prior to their move to New York. Subsequently, she rented her house and moved into a friend's house. In December, 1978 she put the Seattle house up for sale and ultimately sold it on March 16, 1979.

8. In October, 1979 petitioner received her requested transfer to New York. On her return to New York she and her husband purchased a cooperative apartment in New York.

9. During the period January through September 1979, petitioner, as a flight attendant, flew out of Seattle exclusively. She spent in the aggregate "five or six weeks" in New York during layovers and nonworking days.

10. Petitioner also worked part time as a photographer's representative.

11. Petitioner testified that at the time of her transfer she "came home" to New York.

CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his/her permanent home - the place to which he/she intends to return whenever he/she may be absent. (20 NYCRR 102.2(d)(1)). A domicile once established continues until the person in question moves to a new location with the bonafide intention of making his/her 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)). Ordinarily, a wife's domicile follows that of her husband (20 NYCRR 102.2(d)(5)).

B. That petitioner had become a New York domiciliary in 1978. Since her return to the State of Washington in September 1978 was temporary in nature, such removal did not constitute a change of domicile to Washington. Accordingly, petitioner remained a New York domiciliary during the entire year 1979.

C. That pursuant to section 605(a)(1) of Article 22 the Tax Law and §T46-105.0(a)(1) of Chapter 46, Title T of the Administrative Code of the City of New York, a state and city resident individual means an individual:

"who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state."

D. That petitioner has not satisfied the requirements set forth in section 605(a)(1) of Article 22 of the Tax Law and §T46-105.0(a)(1) of Chapter 46, Title T of the Administrative Code of the City of New York. Accordingly, she was a resident individual of the State and City of New York during the entire year 1979.

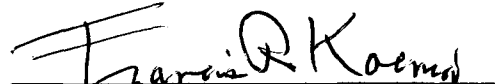
E. That the petition of Rosediane Heffernan is denied and the Notice of Deficiency dated March 18, 1981 is hereby sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER