

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Fay Katz :
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

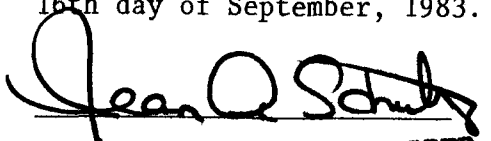
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Bernard & Fay Katz, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Fay Katz
2649 E. 64th St.
Brooklyn, NY 11234

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
16th 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 16, 1983

Bernard & Fay Katz
2649 E. 64th St.
Brooklyn, NY 11234

Dear Mr. & Mrs. Katz:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD KATZ AND FAY KATZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Bernard Katz and Fay Katz, 2649 East 64th Street, Brooklyn, New York 11234, 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. 26720).

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 8, 1982 at 9:15 A.M. Petitioner Bernard Katz appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul LeFebvre, Esq., of counsel).

ISSUES

I. Whether during 1975 petitioners were domiciled in New York 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 were thus resident individuals under Tax Law section 605(a)(1).

II. Whether the penalty asserted pursuant to section 685(a)(1) of the Tax Law was proper.

FINDINGS OF FACT

1. On March 3, 1977, petitioners, Bernard Katz and Fay Katz, filed a joint New York State Income Tax Resident Return for the year 1975 whereon they

indicated that they were residents of New York State only for the period January 1, 1975 to August 31, 1975.

2. On February 9, 1979, the Audit Division issued a Statement of Audit Changes to petitioners wherein their 1975 tax liability was recomputed on the basis that they were New York State residents for the entire year. Pursuant to such recomputation petitioners were allowed a resident tax credit of \$573.00 for tax paid to New Jersey during said year. Accordingly, a Notice of Deficiency was issued against petitioners on February 23, 1979 asserting additional personal income tax of \$877.55, plus penalty and interest of \$507.33, for a total due of \$1,384.88. Said penalty was asserted pursuant to section 685(a)(1) of the Tax Law for failure to timely file their return.

3. Petitioners contended that during the period September 1, 1975 through the close of said year they were domiciliaries and residents of Canada.

4. During 1975 Bernard Katz (hereinafter "petitioner") was employed by, and owned a substantial interest in Sutton Distributors, a wholesale record distributor located in Rahway, New Jersey.

5. Petitioner was instrumental in establishing a branch office of Sutton Distributors ("Sutton") in Toronto, Canada and in so doing made periodic visits there.

6. Petitioner was offered the opportunity to transfer to Sutton's Canadian branch office to run the operation. After approximately six months of visiting the Canadian branch he decided to accept the offer.

7. In late August 1975, petitioner moved to Canada with his wife, two children and mother-in-law. They transferred their household furnishings to Canada and moved into a rented house under a one year lease. Sutton paid petitioners' moving expenses and a portion of the rent.

8. Subsequently, Sutton decided to terminate its Canadian operation. Since petitioners had made many friends and were happy living in Canada they decided to remain. Petitioners then moved into the Holiday Inn in Toronto with their children. They continued living there for approximately three months. At this time petitioner's mother-in-law returned to the United States.

9. Thereafter petitioners moved to an apartment on a temporary basis where they remained for approximately four or five months. Subsequently, they leased an apartment in March 1977 and continued residing there until their return to the United States. Petitioner returned in April 1978 and his wife and daughter returned in August 1978. His second daughter married in 1977 and returned to the United States at that time.

10. Subsequent to his termination with Sutton petitioner unsuccessfully attempted to establish a business in Canada. Several types of businesses were tried, including the sale of ladies handbags, dental floss and home safes. One business venture, Kaddy Home Products Ltd., a ladder accessories manufacturer, was established by petitioner with a neighbor. Although some sales were made, this business proved unsuccessful as well.

11. Petitioner's return to the United States in April 1978 was necessitated by his lack of funds, which were depleted as a result of his various business attempts.

12. Prior to their move to Canada, petitioners resided in a two family home in Brooklyn, New York which they jointly owned with Mrs. Katz's brother. Petitioner contended that subsequent to his move to Canada, he had wanted to sell the house but was unable to do so since his brother-in-law objected. Instead, his apartment was rented during his stay in Canada.

13. On his return, petitioner obtained new employment and moved in with his mother. Subsequently, after the tenant had vacated, he and his family moved back to the jointly owned home at 2649 East 64th Street, Brooklyn, New York. Such move was made in December, 1978.

14. Petitioner entered Canada under a one year working visa. He testified that pursuant to such visa he was prohibited from working in Canada as an employee.

15. Petitioner filed a Canadian Individual Income Tax Return for 1975 and 1976.

16. While in Canada, petitioner never attempted to relinquish his United States citizenship.

17. During his stay in Canada petitioner never voted in an election in either the United States or Canada.

18. While in Canada, petitioner continued to maintain a "small" bank account in New York. Other accounts were transferred to Canada.

19. Petitioners' children attended Canadian schools during their stay in Canada.

20. While in Canada, petitioner obtained a Canadian driver's license and social security number.

21. Petitioner testified that he "originally went to Canada not with the intention of staying there permanently". He claimed, however, that after entering Canada he and his family enjoyed living there to such a degree that they became intent on staying. Also, petitioner knew that if he ran into financial difficulty during his stay in Canada, he would have to return to the United States.

22. Petitioner contended that the penalty asserted pursuant to section 685(a)(1) of the Tax Law was erroneous and improper. He claimed that he was granted an eighteen month extension of time to file by the Internal Revenue Service, however, no such extension was provided by petitioner during the hearing held herein.

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)).

B. 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. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return. (20 NYCRR 102.2(d)(3)).

The evidence to establish the required intention to effect a change in domicile must be clear and convincing [and the] presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Bodfish v. Gallman, 50 A.D.2d 457,458).

C. That petitioners did not change their domicile to Canada during 1975. Rather, they remained domiciliaries of the State of New York during said entire year.

D. That 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. (Tax Law §605(a)(1) and 20 NYCRR 102.2(b)).

E. That since petitioners failed to satisfy the requirements set forth they are deemed residents of New York State for the full taxable year 1975.

F. That petitioners have failed to sustain their burden of proof, required pursuant to section 689(e) of the Tax Law, to show that they were granted an eighteen month extension of time to file as claimed. Accordingly, there is no basis for abatement of the penalty asserted pursuant to section 685(a)(1) of the Tax Law.

G. That the petition of Bernard Katz and Fay Katz is denied and the Notice of Deficiency dated February 23, 1979 is hereby sustained together with such additional penalties and interest as may be lawfully owing.

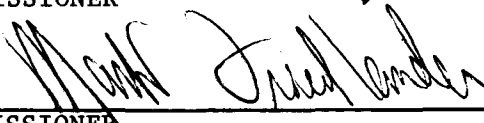
DATED: Albany, New York

STATE TAX COMMISSION

SEP 16 1983


PRESIDENT


COMMISSIONER


COMMISSIONER