

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Francis L. & Patricia M. McKone : 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 :  
1976.

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State of New York  
County of Albany

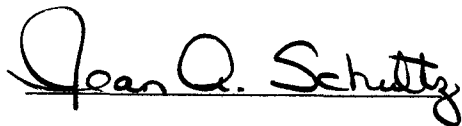
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Francis L. & Patricia M. McKone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis L. & Patricia M. McKone  
c/o Albany Felt Co.  
Box 1109  
Albany, NY 12201

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  
22nd day of July, 1983.

  
Joan A. Schuttz

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

  
Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

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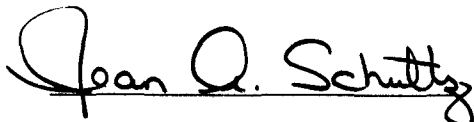
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon T. Kevin Fahey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

T. Kevin Fahey  
Coopers & Lybrand  
One Lincoln Center  
Syracuse, NY 13202

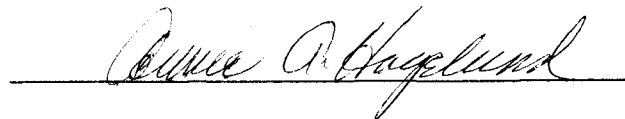
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
22nd day of July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

July 22, 1983

Francis L. & Patricia M. McKone  
c/o Albany Felt Co.  
Box 1109  
Albany, NY 12201

Dear Mr. & Mrs. McKone:

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  
T. Kevin Fahey  
Coopers & Lybrand  
One Lincoln Center  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANCIS L. MCKONE and PATRICIA M. MCKONE	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

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Petitioners, Francis L. McKone and Patricia M. McKone, c/o Albany Felt Co., Box 1109, Albany, New York 12201, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the year 1976 (File Nos. 26425 and 27004).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 14, 1982 at 11:00 A.M. Petitioner Francis L. McKone appeared with Coopers & Lybrand (T. Kevin Fahey, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

#### ISSUE

Whether petitioners, Francis L. McKone and Patricia M. McKone, were domiciled in New York State for the entire year of 1976 and therefore were resident individuals for all of said year in accordance with the meaning and intent of section 605(a)(1) of the Tax Law.

#### FINDINGS OF FACT

1. Petitioners, Francis L. McKone and Patricia M. McKone, timely filed a joint New York State Income Tax Resident Return for the year 1976 wherein they indicated that they were nonresidents of New York State from January 1, 1976 to August 13, 1976 and residents of the State from August 14, 1976 through the end

of the year. Said return claimed a refund due petitioners in the amount of \$1,180.00.

2. Prior to authorizing the claimed refund of \$1,180.00, the Audit Division examined petitioners' 1976 return and determined that they had not incurred a change of residence to New York in 1976, but instead, were taxable as full-year resident individuals. As residents of New York State for the entire year, the Audit Division asserted that all income earned by petitioners, regardless of source, was taxable. Accordingly, the refund as requested by petitioners was not granted and, in lieu thereof, the Audit Division asserted, via separate notices of deficiency dated March 16, 1979, that petitioner Francis L. McKone had a deficiency in personal income tax of \$4,898.98 and that petitioner Patricia M. McKone had a deficiency in tax of \$156.79. Other adjustments were made which were premised solely upon holding petitioners taxable as full-year residents. Accordingly, any decision affecting petitioners' resident status will necessarily affect these other adjustments also.

3. In 1967, petitioner Francis L. McKone accepted permanent employment with the Albany International Corp. (hereinafter "AIC") and, in conjunction with said employment, he and his family moved from Massachusetts to Albany, New York, the location of his employment with AIC. Petitioners purchased a house in the Albany area, registered to vote in New York State, obtained New York drivers licenses, opened bank accounts in New York and enrolled their children in local schools.

4. From 1967 until approximately the early part of 1973, petitioner Francis L. McKone lived and worked in Albany, New York. In the early part of 1973, Mr. McKone was promoted to president of Albany Felt of Canada, a division of AIC. Petitioners sold their home in Albany, New York in June, 1973 and soon

thereafter purchased a house in Quebec, Canada, for \$60,000.00. Petitioners let their New York drivers licenses expire, opened bank accounts in Canada and enrolled their children in school in Canada.

5. Petitioner Francis L. McKone's employment with Albany Felt of Canada was of a permanent nature and of indefinite duration. There existed no written contract under which petitioner accepted the Canadian position, although it was AIC policy to define by contract the duration of an appointment to an overseas position. Petitioners entered Canada on a permanent resident visa, thereby becoming landed immigrants, and paid income taxes to the Canadian government in 1973, 1974, 1975 and 1976. While in Canada, petitioner Francis L. McKone joined the Canadian Manufacturers' Association and the Canadian Pulp and Paper Association.

6. Petitioner Francis L. McKone was born and spent most of his life, until 1967, living and working in Massachusetts. Petitioner Patricia M. McKone was born in Canada; however, she attended college in Massachusetts where she met Francis L. McKone. Mrs. McKone became a naturalized United States citizen in 1955 in order to obtain a teacher's license. Both petitioners retained their status as United States citizens while living in Canada.

7. In March or April of 1976, AIC directed petitioner to temporarily take over a major division in Appleton, Wisconsin, which was in some difficulty from an operating standpoint. Although this assignment was temporary in nature, petitioner believed that once the problems in Wisconsin were resolved he would be reassigned to some major division located within the United States. While working in Wisconsin, Mr. McKone's family continued to reside in Canada.

8. In June, 1976, it became known to Mr. McKone that upon completion of his temporary assignment in Wisconsin, that he would be relocated by AIC back

to its Albany, New York headquarters. Accordingly, the house in Canada was sold and a new residence was purchased in Glenmont, New York, with both the sale and purchase taking place in July, 1976. Mrs. McKone and the children first occupied the new residence in Glenmont, New York, on August 13, 1976. Mr. McKone's assignment in Wisconsin was not completed until November 1, 1976, at which time he joined his family and began working for AIC in Albany, New York.

9. While residing in Canada from 1973 to August, 1976, petitioners only contact with New York State was the occasional attendance by petitioner Francis L. McKone at AIC business meetings scheduled in the Albany, New York headquarters. Neither petitioner had relatives that lived within New York State nor did petitioners vote in any Federal or State elections while residing in Canada. Petitioners' cemetery plots were located in Massachusetts.

#### CONCLUSIONS OF LAW

A. That section 605(a)(1) of the Tax Law defines a resident individual as 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.

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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. [20 NYCRR 102.2(d)(2)].

C. That domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York is domiciled here regardless of whether he has become a United States citizen or 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. 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)].

D. That the general presumption against a foreign domicile is stronger than the general presumption against a change of domicile (Matter of Newcomb, 192 N.Y. 238; Matter of Bodfish v. Gallman 50 A.D.2d 457). This burden is increased by the strong presumption against acquisition of a foreign domicile (Matter of Klein v. S.T.C., 55 A.D.2d 982, 983, Matter of Bodfish v. Gallman, supra 458).

E. That petitioners have failed to clearly show that their move to Canada was of such a permanent nature as to effect a change of domicile. Mr. McKone's transfer to Canada was at the request of his employer and within the realm of his duties as a corporate officer. Therefore, petitioners were domiciled in New York State for the entire year 1976 and residents for all of said year within the meaning and intent of section 605(a)(1) of the Tax Law.





F. That the petition of Francis L. McKone and Patricia M. McKone is denied and the notices of deficiency dated March 16, 1979 are sustained.

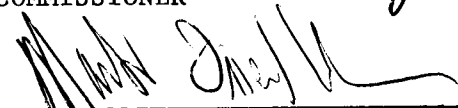
DATED: Albany, New York

STATE TAX COMMISSION

JUL 22 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER