

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Maureen Norsig :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of New York State and New York City Income Tax :
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 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 George & Maureen Norsig, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George & Maureen Norsig
Sierra Amatepec #347
Lomas Barrilaco 10, D.F., MEXICO

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

Ann A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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of :
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for Redetermination of a Deficiency or for Refund :
of New York State and New York City Income Tax :
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Title T of the Administrative Code of the City of :
New York for the Year 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 Frederick I. Kahn the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick I. Kahn
Buchbinder, Stein, Tunick & Platkin
One Pennsylvania Plaza
New York, NY 10119

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

James C. 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

George & Maureen Norsig
Sierra Amatepec #347
Lomas Barrilaco 10, D.F., MEXICO

Dear Mr. & Mrs. Norsig:

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
Frederick I. Kahn
Buchbinder, Stein, Tunick & Platkin
One Pennsylvania Plaza
New York, NY 10119
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE NORSIG and MAUREEN NORSIG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Tax 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 1977.	:	

Petitioners, George Norsig and Maureen Norsig, his wife, Sierra Amatepec #347, Lomas Barrilaco 10, D.F., Mexico, filed a petition for redetermination of a deficiency or for refund of New York State and New York City Income Tax 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 1977 (File No. 30336).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 24, 1982 at 2:15 P.M. Petitioner appeared by Buchbinder, Stein, Tunick & Platkin, CPA's (Frederick I. Kahn, CPA and Jay Pincus, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

Whether petitioners were domiciliaries of the State and City of New York in 1977.

FINDINGS OF FACT

1. Petitioners, George Norsig and Maureen Norsig, his wife, timely filed their IT-201/208 New York State Income Tax Resident Return (with New York City Personal Income Tax calculations) for 1977. Attached to said return was a

Schedule for Change of Resident Status (Form CR 60.1) indicating they were residents of New York State and City from January 1 to June 30, 1977.

2. On April 14, 1980, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$7,547.26 for the tax year 1977. The ground for the deficiency was that petitioners were residents of the State of New York for the full tax year of 1977.

3. The Notice of Deficiency alleged liability in sums as follows:

<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$4,592.70	\$2,954.56	\$7,547.26

4. Subsequent thereto a Notice of Claim was issued pursuant to Section 689(d)(1) of the Tax Law which asserted an additional deficiency in the amount of \$2,695.82. Therefore, the total deficiency claimed is \$7,288.52, plus interest. At the hearing the Audit Division showed that in computing the deficiency it had mistakenly deducted \$10,082.00 in foreign source exempt income from petitioner's total income after petitioner had already deducted that amount. The Notice of Claim corrected that error by adding the exemption back in and recomputing the tax due.

5. At all times herein, petitioner George Norsig was a management consultant employed by McKinsey & Company Inc.

6. In 1973, Mr. Norsig was transferred from the California office of McKinsey & Company Inc. to the New York office where he worked until June 30, 1977. On June 30, 1977, Mr. Norsig was transferred to the Mexico City, Mexico, office of McKinsey & Company Inc.

7. On June 29, 1977, all of petitioners' personal property was moved to Mexico City. They also vacated their New York apartment on that date. They never owned any real property in New York.

8. Subsequent to June 30, 1977, the petitioners have not been back to New York, except that in 1979 or 1980 Mr. Norsig was in New York on company business. On that occasion he did not stay overnight in New York, but instead in New Jersey where he was visiting with his daughter who lives with his former wife.

9. Petitioners maintained that they were never domiciliaries of New York and that during the period in issue they were domiciliaries of California. Neither petitioner testified personally at the hearing and the only documentary evidence offered to substantiate their claim was a California marriage certificate, a driver's license and a closing statement on a house in California. The driver's license was issued in 1979 and the closing statement involved a 1980 transaction.

10. Petitioners were allowed time after the hearing to submit additional evidence, but failed to avail themselves of this opportunity.

CONCLUSIONS OF LAW

A. That, in general, domicile is the place which an individual intends to be his permanent home, that is, the place to which he intends to return whenever he may be absent (20 NYCRR 102.2(d)(1)). The burden of proof is upon the petitioners to show that they intended to continue to be domiciliaries of California (Tax Law §689(e)).

B. That petitioners have not met their burden of proof with respect to continuation of a California domicile. The limited evidence submitted by petitioners did not clearly demonstrate that they never intended to change their California domicile. A California marriage certificate alone, without evidence of other indicators of domicile, is insufficient to establish that during their New York resident period, petitioners had always intended to

return to California. Accordingly, petitioners were domiciled in New York State and New York City during 1977.

C. That section 605(a)(1) of the Tax Law defines a resident individual as one "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." Section T46-105.0(a)(1) of Chapter 46, Title T of the Administrative Code of the City of New York similarly defines resident with respect to residence in New York City. Since petitioners were domiciled in New York State and New York City and spent more than thirty days in New York City during 1977, they were residents of New York State and New York City for the entire year 1977 and subject to tax as such. Therefore, they were not entitled to file resident and nonresident returns as required under section 654(a) of the Tax Law and section T46-154.0(a) of Chapter 46, Title T of the Administrative Code of the City of New York.


D. That section 689(e)(3) of the Tax Law places the burden of proof on the Audit Division with respect to any increase in a deficiency "where such increase is asserted initially after a notice of deficiency was mailed and a petition...filed." The Audit Division met its burden in demonstrating that the foreign source income exemption was erroneously deducted twice and was properly added back to income on the Notice of Claim.

E. That the petition of George Norsig and Maureen Norsig is denied and the Notice of Deficiency issued April 4, 1980 and the Notice of Claim are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

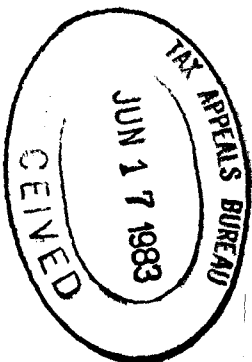
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



George & Marleen Norsig
Sierra Amatepec #347
Lomas Bayrillaco 10, D.F., MEXICO

VIA
AIR MAIL

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit <i>Journal</i> <i>Decision</i>	Date of Request <i>6/20/83</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>Dec F 5-6-83</i>
Name <i>George & Maureen VORSIG</i>	
Address <i>Sierra Amatepec # 347</i> <i>Homos Baulhaco 10. D.F.</i> <i>Mexico</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>NIF RPR 81 80</i> <i>hb 6/24/83</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

May 6, 1983

George & Maureen Norsig
Sierra Amatepec #347
Lomas Barrilaco 10, D.F., MEXICO

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Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Frederick I. Kahn
Buchbinder, Stein, Tunick & Platkin
One Pennsylvania Plaza
New York, NY 10119
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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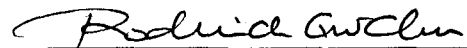
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DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


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COMMISSIONER