

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Stephen G. Stavrides  
and Lynne S. Stavrides :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income  
Tax under Article 22 & 30 of the Tax Law  
for the Years 1976 & 1977. :

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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 Stephen G. Stavrides, and Lynne S. Stavrides the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen G. Stavrides  
and Lynne S. Stavrides  
8 Pinecrest Rd.  
Riverside, CT 06878

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

James A. Supplund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

Stephen G. Stavrides  
and Lynne S. Stavrides  
8 Pinecrest Rd.  
Riverside, CT 06878

Dear Mr. & Mrs. Stavrides:

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 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
STEPHEN G. STAVRIDES and LYNNE S. STAVRIDES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Articles 22 and 30	:	
of the Tax Law for the Years 1976 and 1977.	:	

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Petitioners, Stephen G. Stavrides and Lynne S. Stavrides, 8 Pinecrest Road, Riverside, Connecticut 06878, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the years 1976 and 1977 (File No. 30400).

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 16, 1982 at 9:15 A.M. Petitioner Stephen G. Stavrides appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in, and residents of the State and City of New York during the entire year 1976.

FINDINGS OF FACT

1. Stephen G. Stavrides (hereinafter petitioner) and his wife, Lynne S. Stavrides, timely filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the period January 1, 1976 through June 24, 1976. In conjunction therewith, they filed a Schedule for Change of Resident Status whereon they indicated that they derived no New York State income during

their nonresident period in 1976. For taxable year 1977, petitioners filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the period January 1, 1977 through February 28, 1977. In conjunction therewith, they filed a joint nonresident return for the balance of said year and a Schedule for Change of Resident Status.

2. On April 14, 1980 the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be residents of New York State and New York City for the entire year 1976 on the basis that "Removal from New York State for a temporary and limited period of employment does not constitute a permanent change of residence and the person retains the status he had before such employment". Accordingly, all their income was held taxable for New York State and City purposes. Pursuant to such statement, the deficiency asserted for 1977 arose from petitioners' failure to combine the taxable incomes reported on their resident and nonresident returns and properly compute the tax on such combined total. Based on the above, a Notice of Deficiency was issued against petitioners on April 15, 1980 asserting additional New York State and New York City personal income taxes of \$1,595.04, plus interest of \$500.60, for a total due of \$2,095.64.

3. Petitioner conceded the deficiency asserted for 1977. Accordingly, the sole issue herein is with respect to petitioners' resident status during 1976.

4. Petitioner contended that he and his wife changed their domicile and residence from New York to London, England on June 25, 1976.

5. In early 1976 petitioner, a native New Yorker, was assigned by his New York employer, Universe Tankships Delaware, Inc., to its United Kingdom subsidiary, Crommarty Petroleum Co., Ltd. Petitioner was given the position of financial

director with duties of raising the required funds to build a refinery and managing the financial operations once the refinery was operating. It was purported that such assignment was to be of a permanent nature.

6. On June 25, 1976 petitioner moved to London, England with his wife and four year old child. In London they resided in a rented apartment. After securing their London apartment they surrendered their lease to their New York apartment and had their furniture shipped to London.

7. Petitioner obtained a work permit in England. He made no effort to relinquish his United States citizenship or obtain citizenship in England.

8. While on assignment in England, petitioner continued being paid by the New York parent company, Universe Tankships Delaware, Inc.

9. In London, petitioner obtained an international drivers license. His New York license was not terminated.

10. In November 1976 petitioner became aware that the refinery project was going to be terminated as the result of some unforeseen problems. Subsequently, he was reassigned to the parent company and returned to New York with his family in mid December, 1976 where they commenced to reside in a company apartment. They continued to reside in such apartment until February 28, 1977, at which time petitioner resigned his employment and moved to Massachusetts.

11. At the time petitioner's London employment was being terminated he made no effort to secure other employment in England.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of

Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

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. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. (20 NYCRR 102.2(d)(2)).

C. 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 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).

D. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he changed his domicile to England. Indeed, petitioner's actions demonstrate that his move to England was solely because of his job assignment. Once such assignment ended he returned to New York rather than seek other employment in England. Accordingly, since it is evident that petitioner's intent was not to remain abroad permanently,

but only so long as his assignment was in effect, it must be held that petitioners remained New York domiciliaries during the entire taxable year 1976.

E. That section 605(a) of the Tax Law provides that:

A resident individual means an individual:

(1) 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.


Since the petitioners herein have failed to satisfy the aforestated requirements, they are deemed residents of New York for the entire taxable year 1976.

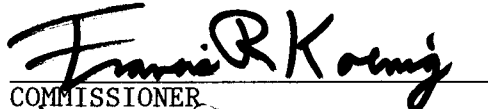
F. That the petition of Stephen G. Stavrides and Lynne S. Stavrides is denied and the Notice of Deficiency dated April 15, 1980 is hereby sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER