

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Stephen Vickers	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1976.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Stephen Vickers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Vickers
21 Greenville Rd.
Scarsdale, NY 10583

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James A. Thompson
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen Vickers :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1976. :
_____ :

AFFIDAVIT OF MAILING

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Robert T. Gradoville, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert T. Gradoville
Kleban & Samor, P.C.
2425 Post Rd.
Southport, CT 06490

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James A. [Signature] Authorized to administer oaths
pursuant to Tax Law section 174

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

December 20, 1983

Stephen Vickers
21 Greenville Rd.
Scarsdale, NY 10583

Dear Mr. Vickers:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Robert T. Gradoville
Kleban & Samor, P.C.
2425 Post Rd.
Southport, CT 06490
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STEPHEN VICKERS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

Petitioner, Stephen Vickers, 21 Greenville Road, Scarsdale, New York 10583, filed a petition for redetermination of a deficiency or for refund of 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 year 1976 (File No. 23443).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1983 at 1:45 P.M. Petitioner appeared by Kleban & Samor, P.C. (Robert T. Gradoville, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether, during the year 1976, petitioner was 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 thirty days in New York and was thus a resident individual under sections 605(a)(1) and 1305(a)(1) of the Tax Law.

II. Whether, if petitioner was a nonresident of New York in 1976, the allocation of days worked in and out of New York as claimed on petitioner's New York State and New York City nonresident income tax returns was correct.

FINDINGS OF FACT

1. Petitioner, Stephen Vickers, a professional hockey player, filed a 1976 New York State Income Tax Nonresident Return and a 1976 New York City Nonresident Earnings Tax Return.

2. On June 9, 1978, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$3,276.81, plus penalty and interest of \$1,188.83, for a total due of \$4,465.64 for the year 1976. A Statement of Audit Changes issued January 30, 1978 explained that petitioner was being considered a resident of New York State for the entire year and his tax liability was recomputed accordingly.

3. Petitioner was born in Toronto, Ontario, Canada. He has always been a Canadian citizen and continued to retain his Canadian citizenship as of the date of the hearing. The New York Rangers hockey team drafted petitioner in 1971 and he joined the team in 1972. Petitioner's visa allowed him to work only during the hockey season; therefore, he took winter leases from September through April in Atlantic Beach, New York. At the end of the season, he would vacation in Florida with teammates and then would return to his parents' home in Canada, where he and his two younger brothers continued to live.

4. For the 1975-1976 season, petitioner took a furnished apartment at 81 Erie, Atlantic Beach. The season ended after the first week in April and petitioner went to Miami for three weeks. Petitioner returned to New York for three days and then returned to Canada so that he would be home for Mother's Day on May 9, 1976. Petitioner would generally try to be back in Canada by May 7 or May 8 because several large family birthday parties were held at this time. During July and August, petitioner stayed at his parents' cottage where he would do conditioning exercises in order to be in good physical condition

for the upcoming season. Since his father was a fireman with six children, petitioner would contribute financially to help with household expenses at his parents' home.

5. In September of 1976, petitioner leased an apartment in Manhattan for the 1976-1977 season. The term of the lease was one year because that was the only period available in Manhattan, although petitioner intended to return to Canada at the end of the season as he always did. Prior to taking the Manhattan apartment, petitioner had always rented furnished apartments because he owned no furniture. The Manhattan apartment was unfurnished however, and petitioner had to buy his own furniture for it. At the end of the season, petitioner kept the apartment because he wanted to live in Manhattan during the next season. In May 1977, petitioner again returned to Canada and left the Manhattan apartment vacant. Petitioner retained the same apartment until May of 1980.

6. During 1976, petitioner had a Canadian driver's license. He did not obtain a New York driver's license until 1979 after he had become a permanent resident. In May of 1976, petitioner bought a car in New York State because it was cheaper than in Canada and he had the car registered in New York. In 1979, petitioner became engaged to and married his wife, a New York resident. At that time, petitioner obtained a permanent resident visa so that he could live and work in New York for the entire year.

7. On his 1976 nonresident return, petitioner allocated days in and out of New York. The Audit Division rejected said allocation. At the hearing, petitioner submitted evidence of the number of games played in and out of New York during 1976. Upon review of said evidence, the Audit Division conceded that the correct and equitable allocation should be based on a fraction with the total number of games played as the denominator and the games played in New

York State as the numerator, or 47 over 93 and for New York City purposes, the games played in New York City as the numerator, or 42 over 93 as submitted by petitioner. During 1976, petitioner spent 154 days in New York State.

CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) provides 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."

B. That "[t]he test of intent with respect to a purported new domicile has been stated as 'whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it' (citation omitted). The evidence to establish the required intention to effect a change in domicile must be clear and convincing." (Bodfish v. Gallman, 50 A.D.2d 457). "To change one's domicile requires an intent to give up the old and take up the new, coupled with an actual acquisition of a residence in the new locality." (Id.).

C. That inasmuch as petitioner had spent his entire life, up to the time he was drafted by the Rangers, in Canada, and since he retained his Canadian citizenship, came to New York only to play hockey on a special limited visa, retained close ties to his family in Canada, continually returned to Canada from year to year, and financially assisted in maintaining the Canadian household, he clearly demonstrated an intent to retain his Canadian domicile. There is no clear and convincing evidence that petitioner intended to take up New York as his permanent domicile in 1976. The fact that petitioner took a full-year lease on a Manhattan apartment because he could not find a seasonal apartment

falls short of demonstrating an intent to become a domiciliary of New York State and New York City.


D. That sections 605(a)(2) and 1305(a)(2) of the Tax Law define a resident individual, in pertinent part, as one who is not domiciled in New York State or New York City and spends in the aggregate more than one hundred eighty-three days of the taxable year in the state or city. Inasmuch as petitioner was not domiciled in New York State or New York City and spent only 154 days in the state or city during 1976, he was a nonresident for the taxable year 1976 and petitioner's allocation of income should be modified in accordance with the fractions set forth in Finding of Fact "7", supra.

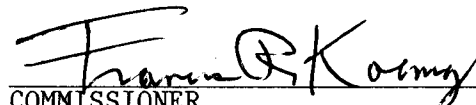
E. That the petition of Stephen Vickers is granted to the extent indicated and the Notice of Deficiency issued June 9, 1978 is to be modified in accordance with Conclusion of Law "D" above.


DATED: Albany, New York

DEC 20 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER