

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William S. & Alice P. Wightman : 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 :
1977.

State of New York
County of Albany

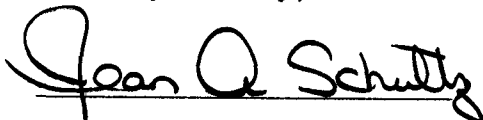
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon William S. & Alice P. Wightman, the petitioner in the within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

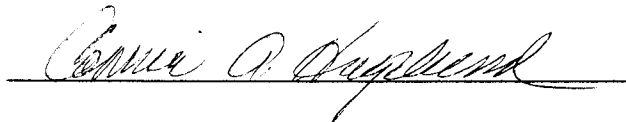
William S. & Alice P. Wightman
Rua Nereu Ramos, Apto 91
Blumenau, BRAZIL

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.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William S. & Alice P. Wightman : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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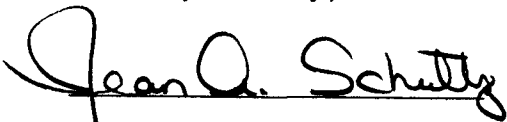
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Robert W. Linaberry the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

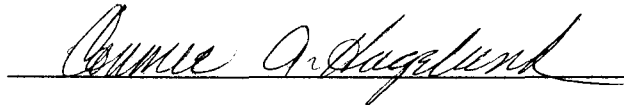
Robert W. Linaberry
Price, Waterhouse & Co.
One Mony Plaza
Syracuse, NY 13202

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

William S. & Alice P. Wightman
Rua Nereu Ramos, Apto 91
Blumenau, BRAZIL

Dear Mr. & Mrs. Wightman:

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
Robert W. Linaberry
Price, Waterhouse & Co.
One Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM S. WIGHTMAN AND ALICE P. WIGHTMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1977.	:	

Petitioners William S. Wightman and Alice P. Wightman, Rua Nereu Ramos, Apto. 91, Blumenau, Brazil, 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 1977 (File No. 28965).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 18, 1981 at 2:45 P.M. Petitioners appeared by Robert W. Linaberry, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners were domiciliaries and residents of New York State for the entire year 1977, or did a change of domicile to Brazil occur as of June 1, 1977.

FINDINGS OF FACT

1. Petitioners, William S. Wightman and Alice P. Wightman, filed a New York State Income Tax Resident Return for 1977 on which they indicated their period of New York State residence as January 1, 1977 to May 31, 1977.

2. The Audit Division held that a domicile is the place which an individual intends to be his permanent home. A domicile once established continues until the person moves to a new location with the bona fide intent 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, even though of a relatively long duration. Accordingly, the Audit Division held that petitioners were domiciliaries of New York State for all of 1977 and taxable as resident individuals on all income earned. An adjustment made to petitioners' tax return pursuant to section 612(b)(11) of the Tax Law is not at issue. A Notice of Deficiency was issued on December 31, 1979 for \$1,788.29 in personal income tax plus \$260.28 in interest, for a total of \$2,048.57.

3. Petitioners left New York State in May 1977 and sold their New York home. Petitioners own a vacation home in Fenwick, Connecticut to which they return periodically for nonbusiness purposes.

4. Petitioners moved to Blumenau, Brazil in response to business opportunities there and leased a home. Petitioners entered Brazil under permanent resident visas. These visas contain no limitation as to stay or employment in Brazil. Petitioner William S. Wightman's employment is indefinite.

5. Brazilian driver licenses were obtained by petitioners and their New York State driver licenses were allowed to expire. An automobile was purchased for use in Brazil.

6. Petitioners' will was changed to conform with Brazilian law prior to moving to Brazil.

7. Petitioners established a bank account in Brazil and were subject to tax as residents of Brazil.

8. Petitioner William S. Wightman belongs to the Association Tecnica Brasileira de Celulose e Papel, a national organization of the Brazilian pulp and paper industry. He is also a committee member of an English teaching civic organization as well as a member of two social clubs in Blumenau, Brazil.

CONCLUSIONS OF LAW

A. That a citizen of one country may acquire a domicile in another country as in Re Blanchard's Estate, 29 NYS2d 359; Re Rothschild, 148 NYS 368. One may retain his nationality and citizenship but become domicile in a foreign country as in Re Appleby's Estate, 106 NYS2d 294, affd 112 NYS2d 493; Matter of Chadwick's Will, 181 NYS 336. In other words, to effect a change of domicile, naturalization in the country a person adopts as his domicile is not essential as in Stadtmuller v. Miller, 11 F2d 732. In the Matter of Newcomb, (192 NY 238, 250-251), it was determined that the actual acquisition of a residence in another place plus the present intent to establish a new home there was sufficient to establish domicile.

In fact, a change of residence for even a short time accompanied by a good faith intention to change the domicile is sufficient. (Matter of Newcomb, supra. Gromel v. Gromel, 22 Misc. 2d 33). Nor is it necessary for an individual to renounce his citizenship in order to establish a foreign domicile. (In Re Appleby's Estate, 106 NYS 2d 294).

B. That petitioners have sustained their burden of proof as required by section 689(e) of the Tax Law in establishing by a fair preponderance of all the available evidence that they acquired a foreign domicile in Brazil. The acts of petitioners after May 31, 1977, when they took up residence in their rented home in Brazil, confirmed their stated intention to make Brazil their

domicile. They completely abandoned their New York domicile. They sold their home, moved to Brazil, leased a home in Brazil and purchased an automobile. Petitioner William S. Wightman expects his employment to continue indefinitely. Petitioners are registered and pay taxes in Brazil as permanent residents. It has clearly been shown that petitioners changed their domicile and residence in 1977 from New York to Brazil (Matter of John J. Kenney and Rosemary D. Kenney, State Tax Commission, September 7, 1979; Matter of Verna H. Hull, State Tax Commission, November 27, 1981; and Matter of Johanna Tatle Reiss, State Tax Commission, February 18, 1981).

C. That the Audit Division is directed to recompute the Notice of Deficiency issued on December 31, 1979 allowing the income and deductions as shown on petitioners' return, with the exception of the modification pursuant to section 612(b)(11) of the Tax Law.

D. That the petition of William S. Wightman and Alice P. Wightman is granted to the extent indicated in Conclusion of Law "C" and that, except as so granted, is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 22 1983

Rodrica G. W. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER