

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Myron D. & Glodyle Zigrossi, Jr. :
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 :
1979. :
_____ :

AFFIDAVIT OF MAILING

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Myron D. & Glodyle Zigrossi, Jr., the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myron D. & Glodyle Zigrossi, Jr.
1306 W. Risk St. #3B
Plant City, FL 33566

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
27th day of May, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Myron D. & Glodyle Zigrossi, Jr. :
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 :
1979. :
_____ :

AFFIDAVIT OF MAILING

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Reuben R. Mandel the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Reuben R. Mandel
David Kestenbaum & Co.
10 East 40th St., Room 1110
New York, NY 10016

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
27th day of May, 1983.

David Parchuck

Reuben R. Mandel

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Myron D. & Glodyle Zigrossi, Jr.
1306 W. Risk St. #3B
Plant City, FL 33566

Dear Mr. & Mrs. Zigrossi:

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
Reuben R. Mandel
David Kestenbaum & Co.
10 East 40th St., Room 1110
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MYRON D. ZIGROSSI, JR. and GLODYLE ZIGROSSI : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1979. :

Petitioners, Myron D. Zigrossi, Jr. and Glodyle Zigrossi, 1306 West Risk Street, No. 3B, Plant City, Florida 33566, 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 1979 (File No. 35271).

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 December 1, 1982 at 10:45 A.M. Petitioners appeared by David Kestenbaum & Co. (Reuben R. Mandel, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Michael Gitter, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in and residents of New York State during the taxable year 1979.

FINDINGS OF FACT

1. Petitioners, Myron D. Zigrossi, Jr. and Glodyle Zigrossi, filed a New York State Income Tax Nonresident return for 1979.

2. On September 10, 1981, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$3,464.54 plus interest of \$418.39 for a total due of \$3,882.98 for the year 1979. A Statement of Audit Changes issued September 2, 1980 explained that, although petitioners had moved to Florida in

connection with a change in Mr. Zigrossi's employment situation, they had maintained their New York residence during the year and, therefore, there was no intent to change domicile. Petitioners were considered New York residents for the entire year 1979.

3. Petitioners lived in Barker, New York prior to 1978. Petitioner Myron D. Zigrossi worked at a frozen food plant in Barker. In 1978 Myron Zigrossi was promoted to Vice President and because of the promotion was required to move to Florida. Petitioners moved to Florida and entered into a lease of an apartment for the last six months of 1978. Petitioners also leased an apartment in Florida for all of 1980. However, no evidence of a Florida lease for 1979 was submitted. On June 5, 1979 petitioner Myron Zigrossi registered to vote in Florida and filed a Declaration of Residence indicating his intent to maintain a permanent home in Plant City, County of Hillsborough, Florida.

4. Petitioners did not sell their home in New York during the period in issue nor did they move all of their furniture to Florida. Petitioners used rented furniture in their Florida apartment. During 1979 petitioners spent four months in New York, from June 1 through September 30 in connection with petitioner Myron Zigrossi's new position as Vice President - Production which required him to be at the Barker, New York plant during the production period. Petitioners lived in their New York home during this period instead of acquiring temporary quarters at company expense.

5. From the date Myron Zigrossi was promoted to his new position in Florida on April 4, 1978 to the end of 1979, petitioners lived in their New York home for a total of seven months. As of the date of the hearing, petitioners had not yet purchased a home in Florida and, apparently, had not sold their New

York home since petitioners' representative indicated they were retaining the New York house for investment purposes until it further appreciated in value.

6. Petitioners argued that their situation was similar to that of another individual who reportedly was found to owe no New York State taxes for a period during which said individual was domiciled in another state but maintained a residence in New York.

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 the burden of proof is upon the petitioners to show that the necessary intention to effect a change in domicile existed (Tax Law §689(e); 20 NYCRR 102.2(d)(2)). "The 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).

C. That "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" (Bodfish, supra). The fact that a person leaves his established domicile with the intention of never returning is important but not necessarily conclusive, and such domicile continues until a new one is clearly established. "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)).

D. That the fact that petitioners registered to vote and filed a Declaration of Residence in Florida, while indicative of an intent to change domicile, are not conclusive (see Zinn v. Tully, 54 N.Y.2d 713, rev'g 77 A.D.2d 725). Petitioners continued to maintain their house and furniture in New York after they moved to Florida. They returned to New York for three months in 1978 and four months in 1979 to allow Myron Zigrossi to work at the same Barker plant as before the move. During these periods, petitioners lived in the New York home which they continued to maintain. Such conduct does not clearly demonstrate the intention to give up the old and take up the new domicile and petitioners have not meet their burden of proof with respect to a change in domicile. Petitioners were, therefore domiciled in New York for the year 1979.

E. 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." Since petitioners were domiciled in New York and maintained a home in Barker, New York and spent more than thirty days in New York during 1979, they were residents of New York in 1979 and subject to tax as such.

F. That each case is decided on its own facts and the facts in petitioners' case are dissimilar from those in the situation cited by petitioners in Finding of Fact "6". Petitioners were New York domiciliaries claiming a change in domicile whereas in the situation cited the individual in question had an established domicile out of state with a residence in New York. This distinction requires different results in the two cases.

G. That the petition of Myron D. Zigrossi, Jr. and Glodyle Zigrossi is denied and the Notice of Deficiency issued September 10, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983

Rodriguez
PRESIDENT

Frank R. Koenig
COMMISSIONER

W. J. J. J.
COMMISSIONER