

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Bruce & Dolores Boisclair	:	
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	:	
1980.	:	

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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Bruce & Dolores Boisclair, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bruce & Dolores Boisclair
29064 West Saddlebrook Dr.
Agoura, CA 91301

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
31st day of December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bruce & Dolores Boisclair :
AFFIDAVIT OF MAILING
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 :
1980. :
_____ :

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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Louis B. Silvers, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis B. Silvers
19301 Ventura Blvd., Suite 204
Tarzana, CA 91356

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
31st day of December, 1984.

David Parchuck

Nicola J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

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

December 31, 1984

Bruce & Dolores Boisclair
29064 West Saddlebrook Dr.
Agoura, CA 91301

Dear Mr. & Mrs. Boisclair:

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, 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
Louis B. Silvers
19301 Ventura Blvd., Suite 204
Tarzana, CA 91356
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BRUCE AND DOLORES BOISCLAIR	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Year	:	
1980.	:	

Petitioners, Bruce and Dolores Boisclair, 29064 W. Saddlebrook Drive, Agoura, California 91301, 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 for the year 1980 (File No. 45040).

On August 29, 1984, petitioners waived a formal hearing and consented to submission of this matter to the State Tax Commission based on the entire record contained in the file. The following decision is rendered upon the file as presently constituted.

ISSUE

Whether petitioners changed their residence from New York State to California during 1980.

FINDINGS OF FACT

1. Petitioners, Bruce and Dolores Boisclair, filed a part year New York State Income Tax Resident Return for the year 1980 wherein they indicated that they were residents of New York State for three months and nonresidents for the remainder of the year. Petitioners, Bruce and Dolores Boisclair, indicated their occupations as "pro athlete" and "stewardess", respectively. Included as part of this filing was a Schedule for Change of Resident Status (CR-60.1), which showed the following items of income, loss and deduction:

	<u>Total Income (All Sources) Column A Income from federal return</u>	<u>Resident Period Column B Income from Column A for this period</u>
Wages	\$ 16,760.00	\$16,760.00
Interest income	4,066.00	1,017.00
Refunds of state income taxes	3,168.00	3,168.00
Business income	100,000.00	
Rental loss	(3,130.00)	
Total	<u>\$120,864.00</u>	<u>\$20,945.00</u> ¹
Adjustments to income	8,692.00	1,720.00 ¹
Total income	<u>\$112,172.00</u>	<u>\$19,225.00</u>

Said schedule also showed that petitioners' New York itemized deductions for the resident period were \$2,339.00 and that they were residents of New York State from January 1, 1980 to April 2, 1980.

2. Petitioners' home at 127 Nassau Avenue, Manhasset, New York was converted to rental property on April 1, 1980 and rented to Ronald Hodges, a New York Mets baseball player, for the 1980 season. Petitioners incurred a rental loss of \$3,130.00 on said property for the period April 1, 1980 through December 31, 1980.

3. On October 15, 1982, the Audit Division issued to petitioners a Statement of Audit Changes imposing additional personal income tax of \$6,009.58 (petitioners' New York taxable income was adjusted to \$78,178.00), plus interest of \$1,136.53, for a total due of \$7,146.11. The statement was issued on the grounds that "[s]ince you failed to reply to our letter dated October 28, 1981, and follow-up letters dated February 26, 1982 and June 3, 1982, you are being taxed as a full year resident of New York in 1980 and you are therefore taxed

¹ The amount of \$1,720.00 appears to represent expenses for meals and lodging which were incurred by petitioner Bruce Boisclair while employed by the Hanshin Tigers in Japan.

on all income regardless of source". Accordingly, a Notice of Deficiency was issued on March 10, 1983.

4. In a letter to the Audit Division dated August 7, 1981, petitioners stated, inter alia, as follows:

"The Boisclairs were residents of New York state (sic) in 1979 and continued to be until March of 1980 when Mr. Boisclair terminated his employment with the New York Mets. His intent at that time was to establish residence outside of New York. His New York residence was converted to a rental and they quit the state for a temporary residence in Japan. Upon returning from Japan, they established permanent residence in California.

After quitting his New York domicile Mr. Boisclair went to Japan where he played out a six month contract for which he received \$100,000.00. His family accompanied him²."

5. In another letter dated October 27, 1982, petitioners asserted that they (1) departed New York State in April of 1980; (2) moved to Japan at that point and gave up their New York residency; (3) moved their furniture to California; and (4) filed a California part-year resident tax return. The income received by Bruce Boisclair for playing out his six month baseball contract was reported to California and to Japan and the appropriate income taxes paid. Petitioners refused to submit a copy of their California Income Tax Return but did submit a copy of their U.S. Individual Income Tax Return for 1980.

6. Petitioners submitted with their petition a copy of the Bill of Lading from Bekins Van Lines Co. which showed that their household goods were shipped from 127 Nassau Avenue, Manhasset, New York to 3167 Fond Drive, Encino, California, which was the home of Mrs. Boisclair's parents. The bill indicated a delivery

² The record in this matter contains conflicting statements as to whether petitioner Bruce Boisclair's family accompanied him to Japan.

date of April 22, 1980. They also submitted a copy of a cancelled check to show payment for the cost of shipping their car to California in April of 1980.

7. On May 9, 1980, petitioner Dolores Boisclair signed an affidavit of voter registration with the State of California in which she listed her parents' residence as her address. She lived with her parents until she and her husband found a house and put a deposit on it in November of 1980.

8. On November 8, 1980, petitioner Bruce Boisclair signed an "Agreement to Occupy" and an "Option to Purchase" with Morrison Ranch Estates, whereby petitioners declared their intention to purchase Tract No. 33402, Lot No. 48, in Agoura, California as their principal residence. On November 12, 1980, he and his wife signed a contract to purchase said real estate and on December 12, 1980, petitioners' household goods were delivered to the Agoura house from 3167 Fond Drive, Encino.

9. Petitioners submitted a copy of an amendment to lease between them and George and Vicki Vatistas, the lessees, which was unsigned. The lease between the Boisclairs and the Vatistas commenced on October 10, 1980 and was to end on October 9, 1981. A copy of the original lease was not submitted. Petitioners' representative claimed that the Vatistas followed Ronald Hodges as tenants in the Manhasset house.

10. Petitioners filed a copy of Federal Schedule C with their 1980 federal income tax return on which petitioner Bruce Boisclair reported income he received of \$100,000.00 for playing out a six month baseball contract with the Hanshin Tigers in Japan. In computing the amount of the foreign tax credit, petitioner Bruce Boisclair deducted from said income his expenses amounting to

\$27,710.00³, resulting in taxable income of \$72,290.00. On their U.S. Individual Income Tax Return for 1980, petitioners claimed a foreign tax credit of \$25,000.00. The record does not indicate when in 1980 petitioner returned to the United States.

CONCLUSIONS OF LAW

A. That petitioners Bruce and Dolores Boisclair failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they changed their status from resident to nonresident on April 3, 1980. Petitioner Bruce Boisclair's sole purpose for leaving New York State was to play out a six month baseball contract in Japan (Finding of Fact "4" supra); therefore, petitioners' move to Japan was temporary in nature and petitioners changed neither their domicile nor their status as New York State residents on said date [see Tax Law §605(a); 20 NYCRR 102.2(d)(2)].

B. That petitioners' intent to remain in the State of California was first evidenced by signing an Agreement to Occupy and an Option to Purchase real estate to be used as their principal residence. This occurred on November 8, 1980, and said date is considered to represent the date on which petitioners changed their domicile and their residence from New York to California.

C. That petitioners were required to file both a resident return and a nonresident return pursuant to section 654(a) of the Tax Law. On their return for the resident period, petitioners are entitled to deduct, as an adjustment to New York income, employee business expenses of \$2,520.00 and moving expenses of \$6,172.00 incurred in connection with income earned in Japan while a New York

³ The amount of \$27,710.00 represents expenses of \$18,932.00, claimed as an itemized deduction directly allocable to income he received of \$100,000.00, and expenses of \$8,778.00, not directly allocable to said income and not claimed as an itemized deduction.

resident. Petitioners also are entitled to deduct, as a New York itemized deduction, other employee business expenses of \$18,932.00 which were incurred as an employee of the Hanshin Tigers in Japan. For the nonresident period, petitioners' only income or loss from New York sources was the rental loss from property located in Manhasset, New York during the period November 8, 1980 to December 31, 1980. Petitioners' New York State income tax liability is to be based on the following items of income, loss and deduction:

	<u>Total Income All Sources</u>	<u>Resident Period</u>	<u>Nonresident Period</u>	
	<u>Income from federal return</u>		<u>Federal income during nonresident period</u>	<u>N.Y.S. Sources</u>
Wages	\$ 16,760.00	\$ 16,760.00		
Interest income	4,066.00	3,388.33	\$677.67	
Refund of state income taxes	3,168.00	3,168.00		
Business income	100,000.00	100,000.00		
Rental loss	(3,130.00)	(2,434.44)	(695.56)	(695.56)
Total	\$120,864.00	\$120,881.89	-	-
Adjustments to income	8,692.00	8,692.00	-	-
Total income	\$112,172.00	\$112,189.89	-	-
Less refund of state taxes		3,168.00		
Total income		\$109,021.89		
Less N.Y. itemized deductions (\$2,339.00 + \$18,932.00)		21,271.00		
Balance		\$ 87,750.89		
Less exemptions		1,875.00		
New York taxable income		\$ 85,875.89		

D. That the New York taxable income in Conclusion of Law "C" supra, results in an increased deficiency [Tax Law section 689(e)(3)]; however, since a Notice of Deficiency was mailed and a petition filed, and a greater deficiency has not been asserted by the Audit Division, the tax due from petitioners is limited to the amount shown due on said notice.

E. That the petition of Bruce and Dolores Boisclair is denied and the Notice of Deficiency issued on March 10, 1983 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER