

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph P. & Alexandra Kazickas :
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 Years :
1974 & 1975. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

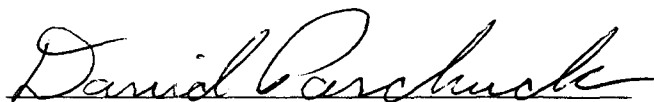
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Joseph P. & Alexandra Kazickas, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. & Alexandra Kazickas
275 Madison Ave.
New York, NY 10017

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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Joseph P. & Alexandra Kazickas :
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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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Nathan Hirschberg, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nathan Hirschberg
8 Haven Ave.
Port Washington, NY 11050

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
18th day of January, 1984.

David Parchuck

Quinn A. Henschel
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Joseph P. & Alexandra Kazickas
275 Madison Ave.
New York, NY 10017

Dear Mr. & Mrs. Kazickas:

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
Nathan Hirschberg
8 Haven Ave.
Port Washington, NY 11050
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH P. KAZICKAS and ALEXANDRA KAZICKAS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioners, Joseph P. Kazickas and Alexandra Kazickas, 275 Madison Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File Nos. 33498 and 33897).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1983 at 1:15 P.M. Petitioners appeared by Nathan Hirschberg, Esq. and Robert Nadler, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York to Connecticut during the 1975 tax year.

FINDINGS OF FACT

1. Petitioners herein, Joseph P. Kazickas and Alexandra Kazickas, filed a resident New York State Combined Income Tax Return for 1974 and a nonresident New York State Combined Income Tax Return for 1975. Petitioners filed separately on said return and listed their home address as 530 Fifth Avenue, New York, New York. This address was actually that of their New York employer. Petitioners

reported all of their 1975 wage and salary income as income from New York State sources.

2. Petitioners signed a consent fixing the period of limitation upon assessment on their 1974 and 1975 personal income tax returns to April 15, 1981.

3. On August 31, 1980, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners for the years 1974 and 1975. Said Statement showed the 1974 taxable income of Mr. Kazickas increased by a net adjustment of \$8,900.00. The adjustment was comprised of federal audit changes not previously reported by said petitioner of \$12,919.00, a decrease in partnership income of \$1,952.00 and a decrease in dividend income of \$2,067.00. These adjustments resulted in additional tax due for 1974 from Mr. Kazickas of \$1,335.00. The 1974 taxable income of Mrs. Kazickas was increased by \$2,067.00 which represented dividend income received by Mrs. Kazickas and erroneously reported by Mr. Kazickas. This adjustment resulted in additional tax due for 1974 from Mrs. Kazickas of \$173.71.

The Audit Division recomputed petitioners' 1975 taxes as resident individuals based on their determination that petitioners were domiciled in and residents of New York State for all of 1975. The 1975 taxable income of Mr. Kazickas was also increased because of a federal audit adjustment not previously reported by petitioner. The 1975 federal audit adjustment included an increase to an income item of \$49,079.00 and a disallowed miscellaneous itemized deduction of \$242,795.00. The Statement of Personal Income Tax Audit Changes showed additional tax due for 1975 from Mr. Kazickas of \$80,087.90 and from Mrs. Kazickas of \$172.40.

4. On April 13, 1981, the Audit Division issued a Notice of Deficiency against petitioner Joseph P. Kazickas for 1974 and 1975 asserting additional tax due of \$81,422.90, plus interest. On the same date, the Audit Division issued a Notice of Deficiency against petitioner Alexandra Kazickas for 1974 and 1975 asserting additional tax due of \$346.11, plus interest.

5. Petitioners are not contesting the adjustment for the tax year 1974 or the amount of the federal audit adjustments for 1975. Therefore, those adjustments are not at issue.

6. Petitioners resided at 56 Lyncroft Road, New Rochelle, New York from 1953 to March 14, 1975. Sometime prior to May 23, 1974, petitioners began contemplating a move from New Rochelle because of their concern that crime in the neighborhood was increasing (petitioners' home was subsequently burglarized on June 26, 1974) and that the value of the real property in the area was going down.

7. Petitioners decided to sell their New Rochelle residence, and on May 23, 1974 had a brochure printed containing pictures and a full description of the house. The brochure was sent to a number of real estate brokers. Petitioners made other efforts to sell the house, including an exclusive listing with a real estate broker, substantial price reductions and an attempt to reduce the property tax on the house. Despite their efforts, petitioners were unable to sell the house until September, 1978.

8. On February 24, 1975, Mr. Kazickas leased a seven-room house located at 652 Lake Avenue, Greenwich, Connecticut for a one-year period commencing on March 15, 1975. Upon signing the lease, Mr. Kazickas was required to pay the first and last month's rent at \$1,550.00 a month and a security deposit of \$4,000.00. The lease provided that Mr. Kazickas was responsible for the

payment of refuse removal, snow plowing, maintaining the grounds, water rents, charges for telephone, gas, fuel oil and electricity. Said lease contained an option for renewal for a one-year period under the same terms and conditions.

9. The Lake Avenue house was rented partially furnished. The furniture included dressers in some of the bedrooms, bed frames, a portion of the dining room furniture and other basic items. Petitioner brought with them from New Rochelle all the kitchen items, linen, bedding, paintings, some furniture pieces, rugs, books and all their personal items. Items which were not needed were left in the New Rochelle house until such time as the house was sold. At that time, petitioners either moved the remaining furniture to Connecticut or gave the items to family members.

10. Petitioners moved to and resided at the Lake Avenue house from March 15, 1975 until 1978. At that time, they moved into 9 Georgetown North, Greenwich, Connecticut where they continue to reside. Mr. Kazickas did not return to the New Rochelle house in 1975 after his move to Connecticut. He did, however, continue telephone service to the house and continued to insure the house until it was sold. Petitioners kept the telephone line open because, after the house was burglarized in 1974, they installed a more sophisticated alarm system which connected with the police and fire department via the telephone.

11. Petitioner Joseph P. Kazickas' name was listed in the Manhattan telephone directory for the periods 1975-1976, 1977-1978, 1978-1979 and 1979-1980 under the address 56 Lyncroft Road, New Rochelle, New York. Petitioners' son was listed in the Westchester and Putnam telephone directory for 1978-1979 under the New Rochelle address.

12. Petitioners' son stayed at the New Rochelle residence while looking to buy a house in the area for a period of less than one year sometime in 1977 or 1978.

13. In April, 1975, petitioners became members of a church in Greenwich, Connecticut. Also, Mrs. Kazickas closed her New Rochelle savings and checking accounts and opened accounts in Greenwich. Mr. Kazickas continued to do his banking at a New York City bank. Petitioners rented a safe deposit box in Greenwich on April 8, 1975. Petitioners registered their cars in Connecticut during 1975. Petitioners registered to vote and have voted in Connecticut, but could not recall the date they registered. They were not successful in their attempt to obtain such date from the Connecticut election authorities.

14. Petitioners owned a summer house in Easthampton, New York during the years at issue. It was customary for Mr. Kazickas to spend almost every weekend from July through August at the Easthampton summer house. The record does not show the time spent by Mrs. Kazickas at their summer house.

15. Petitioner Joseph P. Kazickas was a partner during 1974 in the partnership of Neris Coal Export Co. The record indicates that in March of 1974, Neris Coal Export Co. ceased doing business as a partnership and that Mr. Kazickas, with other individuals, reformed the business as a corporation by creating Neris Coal Export Co., Inc. The corporation's first taxable year began March 11, 1974 and ended February 28, 1975. During that period, the corporation was treated as a Domestic International Sales Corporation ("DISC") for federal income tax purposes.

16. Petitioner Joseph P. Kazickas was a principal shareholder and an employee of Neris Coal Export Co., Inc., employed at its offices located at 530 Fifth Avenue, New York, New York during the years in issue.

17. Mr. Kazickas received a DISC distribution in February, 1975 in the amount of \$1,064,809.00 from Neris Coal Export Co., Inc. for its taxable year ending February 28, 1975. Petitioners reported the distribution as other income on their 1975 federal income tax return. Said amount was included on their New York State Nonresident Income Tax Return as income not subject to New York State tax. Pursuant to a federal audit for 1975, petitioners' income from DISC was increased by \$49,079.00.

CONCLUSIONS OF LAW

A. That the court stated in the Matter of Bodfish v. Gallman, 50 A.D.2d 457 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 (citation omitted). 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 (citation omitted)."

B. That petitioners, Joseph P. and Alexandra Kazickas, have presented clear and convincing evidence to establish that they became domiciled in the State of Connecticut on March 15, 1975. They have continuously resided in Connecticut from such date to the present. They became members of a Connecticut church and registered and voted in Connecticut. The problems and delays encountered in selling their New York house do not require a contrary conclusion. Accordingly, petitioners were residents of New York State during 1975 from January 1, 1975 through March 14, 1975 and nonresidents from March 15, 1975 to December 31, 1975.

C. That section 654(a) of the Tax Law provides, in part, that:

"If an individual changes his status during his taxable year from resident to nonresident...he shall file one return as a resident for the portion of the year during which he is a resident, and one return

as a nonresident for the portion of the year during which he is a nonresident...".

Section 654(b) of the Tax Law provides, in part, that:

"The New York taxable income...for the portion of year during which he is a resident shall be determined...as if his taxable year for federal income tax purposes were limited to the period of his resident status. The New York taxable income...for the remaining portion of his taxable year during which he is a nonresident shall be determined ...as if his taxable year for federal income tax purposes were limited to the period of his nonresident status."

D. That the DISC distribution received by petitioner Joseph P. Kazickas in February, 1975 from the Neris Coal Export Co., Inc. of \$1,064,809.00 and the federal audit adjustment attributable thereto of \$49,079.00 are includible in petitioner Joseph P. Kazickas's resident period for 1975 in accordance with section 654(b) of the Tax Law.

E. That the Audit Division is directed to compute petitioners' 1975 taxable incomes as residents and as nonresidents of New York State for the periods noted in Conclusion of Law "B". The petitioners' remaining items of income and deduction reported on their 1975 return (taking into consideration adjustments made to itemized deductions on federal audit) are to be apportioned by the Audit Division in accordance with section 654 of the Tax Law. However, by virtue of section 689(d) of the Tax Law, the recomputed deficiencies may not be greater than those originally computed for 1975.

F. That the petition of Joseph P. Kazickas and Alexandra Kazickas is granted to the extent that they are residents of Connecticut as of March 15, 1975 and in all other respects denied. The Audit Division is hereby directed to modify the notices of deficiency dated April 13, 1981 to be consistent with

the decision rendered herein. The notices of deficiency, as modified, together with such interest as may be lawfully owing, are hereby sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER