

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Brenda M. Keegan :
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 1979. :

AFFIDAVIT OF MAILING

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

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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Brenda M. Keegan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Brenda M. Keegan
60 Columbine Rd.
Milton, MA 02186

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
5th day of October, 1984.

David Paruch

James Robert Bond
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Brenda M. Keegan
60 Columbine Rd.
Milton, MA 02186

Dear Mrs. Keegan:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRENDA M. KEEGAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1979.	:	

Petitioner, Brenda M. Keegan, 60 Columbine Road, Milton, Massachusetts 02186, 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. 38453).

A small claims hearing was held before Thomas E. Drake, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on May 7, 1984 at 11:00 A.M., with additional evidence to be submitted by June 6, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner, Brenda M. Keegan, effected a change of domicile to New York State on January 8, 1979, the date her husband moved to New York State, or whether petitioner effected a change of domicile on July 9, 1979, the date she moved to New York State.

II. Whether the interest imposed upon the asserted deficiency may be waived.

FINDINGS OF FACT

1. Petitioner, Brenda M. Keegan (hereinafter "petitioner"), filed a 1979 New York State Income Tax Resident Return with her husband, James B. Keegan,

wherein they reported that petitioner was a resident of New York from July 5, 1979 to December 31, 1979 and that Mr. Keegan was a resident of New York from January 8, 1979 to December 31, 1979. The tax was computed separately based on their respective periods of New York residence.

2. On June 11, 1981, the Audit Division issued to petitioner and her husband a Statement of Audit Changes proposing additional tax due based on the holding that petitioner was a resident of New York from January 8, 1979 through December 31, 1979. The proposed adjustment was explained on the Statement of Audit Changes as follows:

"A wife's domicile follows that of her husband. Since the husband moved to New York State permanently on January 8, 1979, the wife is also considered a resident as of that date. Therefore, she is tax (sic) as a resident on income earned in Pennsylvania for the period January 8, 1979 through July 5, 1979."

Accordingly, on May 5, 1982, a Notice of Deficiency was issued to petitioner asserting additional tax due of \$603.00¹, plus interest of \$127.38 for a total due of \$730.38.

3. Prior to January 8, 1979, petitioner and Mr. Keegan were domiciled in the Commonwealth of Pennsylvania, residing in their jointly owned home located at 522 Milaire Road, St. Davius, Pennsylvania. In November of 1978, Mr. Keegan became aware of a job opening in the Rochester, New York area. He was interviewed on several occasions and finally accepted the position at the end of December, 1978. Mr. Keegan resigned his job in Pennsylvania effective January 5, 1979, and on January 8, 1979 left Pennsylvania to begin his new job in Rochester, New York. Mrs. Keegan continued to reside with their minor children at the Pennsylvania residence.

¹ The Statement of Audit Changes computed additional income tax due from Mrs. Keegan in the amount of \$799.00 and an overpayment due Mr. Keegan in the amount of \$196.00. Said overpayment was applied against petitioner's recomputed tax resulting in the net additional tax due of \$603.00.

4. During the period January 8, 1979 to approximately July 8, 1979, Mr. Keegan resided during the week at the home of Mrs. Keegan's parents in a Rochester, New York suburb. Mr. Keegan spent most weekends during this period at the Pennsylvania residence. Mrs. Keegan spent two weekends in Rochester visiting Mr. Keegan and her parents during this period.

5. From 1975 to the end of June 1979, Mrs. Keegan was employed by a Pennsylvania school district as a teacher and chairperson of the school's English department. During the 1978-1979 school year, Mrs. Keegan had an agreement with her employer to remain in her position through the end of said school year. Mrs. Keegan remained in Pennsylvania through the end of the school year in order to fulfill her commitment to her employer and to allow her children to complete their school year in Pennsylvania. Sometime in the late spring of 1979, petitioner notified her employer that she was resigning her position, effective at the end of June, 1979.

6. Mr. and Mrs. Keegan placed their Pennsylvania residence for sale in April of 1979. They purchased a house in a suburb of Rochester, New York in June of 1979 and closed on the sale of their Pennsylvania residence on July 7, 1979. Both Mr. and Mrs. Keegan moved into their newly purchased home on July 9, 1979.

7. Petitioner and Mr. Keegan filed a Pennsylvania resident income tax return for the period January 1, 1979 through June 30, 1979. Mrs. Keegan reported the income earned in Pennsylvania during said period of \$11,275.78 and paid Pennsylvania income tax thereon of \$248.00. Mr. Keegan reported only the income earned in Pennsylvania during the period January 1, 1979 through January 7, 1979 and paid the income tax due thereon.

8. Petitioner maintained that the delay in obtaining a hearing in this matter was caused by the State and, therefore, she should not be liable for the interest asserted on the Notice of Deficiency.

CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent [20 NYCRR 102.2(d)(1)].

B. 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 [20 NYCRR 102.2(d)(2)].

C. That although petitioner's husband acquired a New York domicile on January 8, 1979, the date he left Pennsylvania for permanent employment in New York State, the facts and circumstances herein establish that petitioner, Brenda M. Keegan, did not acquire a New York domicile on said date. The record shows that she did not intend to abandon her Pennsylvania domicile before her contractual obligations to her employer were completed and that she in fact remained in Pennsylvania through the end of the 1978-1979 school year to fulfill said obligations. Accordingly, petitioner did not effect a change of domicile to New York until July 9, 1979, the date she moved to New York State (See Matter of Joseph W. and Joetta A. Bernhard, State Tax Comm., December 20, 1983; cf. Matter of Christopher F. and Madeline T. Bednarek, State Tax Comm., August 14, 1981 [husband's and wife's domicile changed on the same date where the wife remained for the express purpose of selling their former home]). Therefore, petitioner was not taxable as a resident individual until July 9, 1979 within the meaning and intent of section 605(a) of the Tax Law.

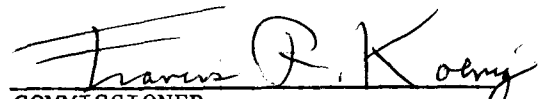
D. That in light of Conclusion of Law "C", supra, it is not necessary to address the second issue herein.


E. That the petition of Brenda M. Keegan is granted and the Notice of Deficiency dated May 5, 1982 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER