

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cynthia L. MacDonald : 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 and Chapter 46, :
Title T of the Administrative Code of the City of :
New York for the Year 1977. :

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Cynthia L. MacDonald, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cynthia L. MacDonald
2701 Cason
Houston, TX 77005

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
20th day of January, 1984.

David Parchuck

James A. Hayward
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

In the Matter of the Petition
of
Cynthia L. MacDonald

: 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 and Chapter
46, Title T of the Administrative Code of the City
of New York for the Year 1977.

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Mark E. Bloom, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark E. Bloom
Seidman & Seidman
15 Columbus Circle
New York, NY 10023

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
20th day of January, 1984.

David Parchuck

Robert P. Hayward
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Cynthia L. MacDonald
2701 Cason
Houston, TX 77005

Dear Ms. MacDonald:

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 & 1312 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
Mark E. Bloom
Seidman & Seidman
15 Columbus Circle
New York, NY 10023
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CYNTHIA L. MACDONALD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioner, Cynthia L. Macdonald, 2701 Cason, Houston, Texas 77005, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 33888).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 9, 1983 at 2:45 P.M. Petitioner appeared by Seidman & Seidman (Mark E. Bloom, CPA). The Audit Division appeared by John P. Dugan, Esq. (William G. Fox, Esq., of counsel).

ISSUE

Whether, during 1977, petitioner was domiciled in New York and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus a resident individual under section 605(a)(1) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioner, Cynthia L. Macdonald, did not file a New York State personal income tax return (with New York City personal income tax) for the year 1977.

2. On January 9, 1981, the Audit Division issued to petitioner a Notice of Deficiency, asserting New York State and New York City personal income taxes due under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for 1977 in the amount of \$5,736.15, plus interest and penalty of \$3,559.05, for a total due of \$9,295.20. The Statement of Audit Changes, issued to petitioner under date October 2, 1980, explained that the deficiency was asserted for petitioner's failure to respond to the Audit Division's previous letter, and that her personal income tax liability was computed from information furnished by the Internal Revenue Service; such computation allowed petitioner the standard deduction of \$2,000.00 and two personal exemptions.

3. Petitioner's federal return for the year under consideration shows a New York City address of 118 West 79th Street. An asterisk appears after the address, and a footnote at the bottom of the page reads, "Taxpayer is Md. resident, 3704 N. Charles St., Baltimore, Md. 21218, filing from business address because away on business, and mail forwarding unreliable." Schedule A of the return indicates excess itemized deductions taken in the amount of \$6,964.00.

4. For the years 1976 through 1979, petitioner filed Maryland resident income tax returns.

(a) Her 1976 Maryland return was an amended return, filed on or about July 9, 1980, and reflected her current address in Houston, Texas.

(b) On her 1977 Maryland return, petitioner utilized the New York City address of 118 West 79th Street. She responded in the negative to the question, "Did you establish or abandon legal residence in Maryland in 1977?"

(c) Petitioner filed her 1978 Maryland return on or about September 4, 1980, using her present Houston address.

(d) On petitioner's 1979 Maryland return, she again used the Houston address. She declared that she was a resident of Maryland until August 31, 1979 and a resident of Texas thereafter.

5. Since sometime prior to 1977, petitioner has leased an apartment located at 118 West 79th Street, New York, New York. Petitioner's daughter has resided in the apartment since 1977, but the lease has not been transferred in order to avoid an increment in the rental. At least until 1982, petitioner and her daughter were listed in the Manhattan telephone directory at the West 79th Street address.

6. On May 30, 1975, petitioner executed a lease for an apartment situated at 3022 North Calvert Street, Baltimore City, Maryland, for a term of one year commencing June 1, 1975. The lease was automatically renewable for additional one-year terms, unless either party gave notice to the contrary at least three months prior to the expiration of the lease or any renewal period. Petitioner renewed the lease for one additional term. Petitioner thereafter leased an apartment at 3704 North Charles Street, Baltimore, presumably until her departure from Maryland on August 31, 1979.

7. During 1977, petitioner possessed a Maryland driver's license which, according to records of the Motor Vehicle Administration of the Maryland Department of Transportation, expired on February 2, 1981. It is not known whether petitioner possessed a New York driver's license.

8. Petitioner is a poet (she has had 3 volumes of her work published) and a professor of writing. From 1969 through 1975, petitioner was employed by Sarah Lawrence College, Bronxville, New York. She served as teaching assistant, Assistant Professor and Associate Professor with the Horace Gregory Writing Program and also, from 1974 to 1975, as Acting Dean of Studies.

In 1975, petitioner accepted a position as Visiting Professor of The Writing Seminars at The Johns Hopkins University in Baltimore. In December, 1976, she was offered and accepted an appointment as full professor, which rank carried with it permanent tenure. On January 25, 1977, the Dean of the Faculty of Arts and Sciences advised petitioner (in confidence) that she could anticipate increments in salary for the academic years succeeding 1977-78.

During 1977 and 1978, petitioner also acted as consultant to the English Department at the University of Houston.

In late 1977, petitioner left Johns Hopkins for a position with the University of Texas (apparently, the branch at Houston). She thereafter purchased the property in Houston where she presently resides.

9. Petitioner's representative offered in evidence the following documents in support of her claim of a Maryland domicile: (a) a billing by Baltimore Gas and Electric Company for service to Apartment A4, 3704 North Charles Street, Baltimore, for the period ended December 29, 1977; (b) two billings by C&P Telephone for service during the periods February 22 through March 21, 1977 and April 22 through May 21, 1977 at the North Charles Street apartment; (c) a billing by David Seagraves Woodworking and Carpentry for shelves built at the apartment in March, 1977; (d) personal correspondence addressed to petitioner at The Johns Hopkins University during 1977; and (e) a biographical data form which petitioner submitted to Who's Who in America on September 29, 1977,

stating her place of birth as New York, New York and her then address as The Writing Seminars of Johns Hopkins.

10. Petitioner maintained a savings account and a checking account at the First National Bank of Maryland in Baltimore during 1977.

11. During 1977, petitioner spent 48 days in New York State, 45 of which she spent in New York City.

CONCLUSIONS OF LAW

A. That according to the definitions furnished by section 605 of the Tax Law (as in effect during the year in question) and section T46-105.0 of the Administrative Code of the City of New York, a resident individual is one who is domiciled in New York State and/or the City of New York unless he or she maintains no permanent place of abode in New York State and/or the City of New York, maintains a permanent place of abode elsewhere and spends not more than 30 days of the taxable year in the state and/or city. Tax Law section 605(a)(1); Administrative Code section T46-105.0(a)(1). If not domiciled in New York State and/or the City of New York, an individual may nonetheless be deemed a resident for tax purposes if he or she maintains a permanent place of abode in such state and/or city and spends more than 183 days of the taxable year in such state and/or city (unless in active service in the armed forces). Tax Law section 605(a)(2); Administrative Code section T46-105.0(a)(2). The crux of the matter is whether petitioner changed her domicile from New York, New York to Maryland in 1977 or sometime prior thereto.

B. That a person's domicile, once established, continues until he or she moves to a new location with the bona fide intention of making his or her fixed and permanent home there. 20 NYCRR 102.2(d)(2). Petitioner's intentions, on first locating to Maryland on or about June 1, 1975, are unknown, but she

accepted employment as a visiting professor and took a leasehold in Baltimore City for one year, which arrangements appear to be temporary in nature. By 1977, however, petitioner had taken a second apartment and assumed a full professorship with permanent tenure at The Johns Hopkins University; her maintenance of bank accounts in Maryland, possession of a Maryland driver's license and payment of Maryland income tax as a resident of that state further manifest her intentions to abandon her ties with New York and establish her home in Maryland. Thus, petitioner has carried her burden to prove that she had changed her domicile to Maryland for the year at issue.

C. That the petition of Cynthia L. Macdonald is hereby granted, and the Notice of Deficiency issued on January 9, 1981 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 3/20/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition 4 - Dec. 1/20/84
Name Cynthia L. Mac Donald	
Address 2701 Cason Houston, TX 77005	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DD	Section	Date of Search 3/20/84
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK

Commission

TAX APPEALS BUREAU

CAMPUS

J.Y. 12227

CLAIM CHECK

3816006

☐ HOLD

DATE

1/23/84

LET NOTICE

1-25

2ND NOTICE

RETURN

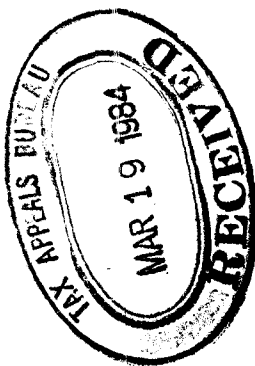
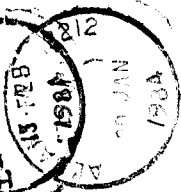
Detached from
PS Form 3800-1A
Feb. 1978

CERTIFIED

P 230 844 487

MAIL

✓
Cynthia L. MacDonald
2701 Cason
Houston, TX 77005



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

January 20, 1984

Cynthia L. MacDonald
2701 Cason
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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
Mark E. Bloom
Seidman & Seidman
15 Columbus Circle
New York, NY 10023
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STATE OF NEW YORK

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CYNTHIA L. MACDONALD	:	DECISION
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C. That the petition of Cynthia L. Macdonald is hereby granted, and the Notice of Deficiency issued on January 9, 1981 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984


PRESIDENT


COMMISSIONER


COMMISSIONER