

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Voldemars Plosis : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Years 1976 & 1977. :

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

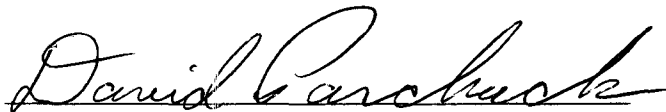
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Voldemars Plosis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

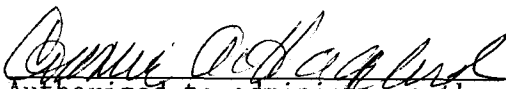
Voldemars Plosis  
165-27 85th Ave.  
Jamaica, NY 11432

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  
9th day of March, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Archibald U. Braunfeld, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

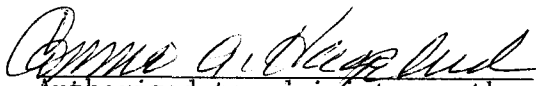
Archibald U. Braunfeld  
21 E. 40th St.  
New York, NY 10016

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  
9th day of March, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Voldemars Plosis  
165-27 85th Ave.  
Jamaica, NY 11432

Dear Mr. Plosis:

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 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  
Archibald U. Braunfeld  
21 E. 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
VOLDEMARS PLOSI	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Articles	:	
22 and 30 of the Tax Law for the Years 1976	:	
and 1977.	:	

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Petitioner, Voldemars Plosis, 165-27 85th Avenue, Jamaica, New York 11432, 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 and New York City personal income tax under Article 30 of the Tax Law for the years 1976 and 1977 (File No. 30532).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1982 at 2:45 P.M. Petitioner appeared with Archibald U. Braunfeld, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether, during each of the years 1976 and 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 Tax Law section 605(a)(1).

FINDINGS OF FACT

1. On January 8, 1979, Voldemars Plosis (hereinafter petitioner), late filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for each of the years 1976 and 1977. On each return he reported his wage income derived from his occupation as a "ships officer". His home address reported on each return was "c/o A. Dzirkalis, 2215 Newkirk Ave., Apt. C4, Brooklyn, New York 11226". In a letter submitted in conjunction with said returns petitioner stated that:

"I have no family, no house or apartment, I have no relatives in this country.

Few years ago I joined the MSC (Military Sealift Command Atlantic) as a deck officer on special project ships on secret projects.

I gave a name and address of a person as a next of kin just to fill the box on the (naval) form. He is not my next of kin. This address now appears automatically on the W-2 form."

Balances due per said returns of \$1,427.60 (1976) and \$2,828.40 (1977) were paid by petitioner.

2. On April 17, 1979 petitioner submitted a letter to the Income Tax Bureau wherein he stated:

"In those years (1976 and 1977) I was not a resident of New York State, and therefore should not have paid the amounts reported on these forms (returns)."

The envelope in which this letter was mailed, as well as the envelope in which the returns at issue were mailed, both listed petitioner's return address as "c/o A. Dzirkalis, 2215 Newkirk Ave., Apt. C4, Brooklyn, New York 11226".

3. On April 30, 1980, petitioner filed a petition for refund of the taxes paid for 1976 and 1977 on the basis that he was a nonresident of New York during the years at issue. Said petition was accepted as a claim for refund.

4. On September 29, 1980 the Audit Division issued a formal notice of disallowance to petitioner wherein it advised that his claims of \$1,427.60 (1976) and \$2,828.40 (1977) were denied in full. On March 30, 1981, a second formal notice of disallowance was issued to petitioner wherein it stated that:

"Taxpayer is or was alien and in order to live in U.S. had to establish a residence here in States. Filed Federal returns in D.C. from 72 and had to report a U.S. address as he became associated with U.S. Navy. Address used in N.Y.S. therefore he is considered a resident".

5. Petitioner was born in Latvia on November 16, 1905.

6. In 1944 petitioner left Latvia and moved to Sweden.

7. Petitioner, a merchant seaman, initially arrived in the United States on June 30, 1958 as a crew member of the Swedish ship "Rigoletto", which ported in Green Bay, Wisconsin. Subsequently, he returned to Sweden on the same ship. Petitioner made said trip under an American visa. He contended that on his return to Sweden he continued to maintain his previous address in Stockholm.

8. In December 1958 petitioner entered New York as a passenger on a steamer with a Green Card, Alien Registration No. A10 453 678. He stayed in a rooming house in the Bay Ridge area of Brooklyn for ten (10) days. He then signed on a tanker, S/S Petrolina, on December 18, 1958. He was flown to San Francisco to board said tanker, which returned to San Francisco in April 1959. He then returned to New York, where he stayed at the Swedish Seaman's Center in Brooklyn.

9. On May 7, 1959 petitioner commenced employment with the Honduran steamship company, Empresa Hondurena De Vapores, S.A., (hereinafter Empresa) Puerto Cortes, Honduras, C.A. He remained so employed until May 1, 1970. Petitioner was hired through Empresa's branch office at 33 Rector Street, New York City.

10. With respect to the eleven (11) years during which petitioner was employed by Empresa, the following facts have been determined from the record.

a) Wage statements issued by Empresa reported petitioner's address as follows:

1968 - 29 Lourdes Ave., Jamaica Plains, Mass. 1969 - 52 Forbes St., Jamaica Plains, Mass. 1970 - 29 Lourdes Ave., Jamaica Plains, Mass.

b) The above stated addresses belonged to two friends and were used by petitioner to store part of his possessions during the years 1959 through 1966. A portion of petitioner's possessions were also stored at various times with friends in San Francisco, California, Brookline, Massachusetts and Stockholm, Sweden.

c) On petitioner's 1962 U.S. Individual Income Tax Return he reported his address as c/o V. Stelbergs, 29 Lourdes Ave., Jamaica Plain, Mass.

d) A letter sent by petitioner to the Internal Revenue Service on February 28, 1964 was sent from Brooklyn, New York. In such letter petitioner stated:

"My address as reported January for aliens is c/o V. Stelbergs, 29 Lourdes Ave., Jamaica Pl. 30. Mass. but please forward the answer to this letter to me c/o Empresa Hondurena De Vapores S.A. 33 Rector Street, New York 6, N.Y."

e) A letter sent to petitioner on August 25, 1965 by the Internal Revenue Service was mailed to petitioner at 33 Rector Street, New York 6, New York.

f) Petitioner became a United States citizen on September 3, 1968. His Certificate of Naturalization reports his country of former nationality as "Latvian". His address reported on said certificate was 150 South Portland Avenue, Brooklyn, New York. Petitioner testified that said address was that of the Swedish Seaman's Center. Petitioner's name was legally changed at this time from Voldemars Plose to Voldemars Plosis.

g) On an Exemption of Income Earned Abroad schedule filed for the year 1970 petitioner reported that he was a bona fide resident of Honduras. The type of living quarters in foreign country was reported as "ships of the company". Number of days in U.S. was reported as 301.

h) On a form prepared May 15, 1969, with respect to the performance of surgery, petitioner's address was listed as 52 Forbes St., Jamaica Pl., Mass.

i) Empresa sent a letter on April 7, 1970 to petitioner at P.O. Box 429, Seaman's Church Institute of New York, 15 State Street, New York, N.Y. 10004.

j) Petitioner sent a letter to the Internal Revenue Service on April 8, 1970 wherein he stated that:

"My address is no more with that company (Empresa). I do not know yet my future permanent address. For the time being I use V. Plosis, c/o Dzikalis, 2215 Apt. C4, Newkirk Ave., Brooklyn 11226 N.Y."

11. On May 12, 1970, Empresa sent a letter to petitioner at the Newkirk Avenue address. Said letter stated that at petitioner's request, his retirement trust fund checks would be regularly sent to the Latvian Federal Credit Union in Melville, New York, for deposit into his savings account.

12. Petitioner was unemployed from May 1, 1970, when he terminated his employment with Empresa, until some time in 1972. The record is void of information with respect to petitioner's residence, if any, and activities during this period.

13. In 1972 petitioner became connected with the Military Sealift Command, Atlantic, U.S. Navy, as a 2nd or 3rd officer on special project ships. He was retired from naval service on February 15, 1979. His sea log discloses the following:

<u>NAME OF SHIP</u>	<u>DATE AND PLACE VOYAGE BEGINS</u>	<u>DATE AND PLACE VOYAGE ENDS</u>
USNS PVT FX McGraw	July 22, 1972 Bayonne, N.J.	October 17, 1972 Sunny Point, N.C.
USNS Kingsport	January 22, 1973 Bayonne, N.J.	February 16, 1973 Charleston, S.C.
USNS PVT JR Towle	July 10, 1973 New York, N.Y.	August 15, 1973 New York, N.Y.
USNS PVT JR Towle	August 16, 1973 New York, N.Y.	August 27, 1973 New York, N.Y.



USNS PVT JR Towle	August 28, 1973 New York, N.Y.	November 17, 1973 Charleston, S.C.
(illegible)	June 21, 1974 Southampton, England	October 31, 1974 Southampton, England
USNS Neptune	December 22, 1974 Southampton, England	September 10, 1975 Norfolk, VA
USNS Kane	April 11, 1976 New York, N.Y.	December 6, 1977 Bayonne, N.J.
USNS Kingsport	December 20, 1977 Savannah, Ga.	March 11, 1978 Cheatham Annex, Va.
USNS PVT JR Towle	March 20, 1978 Baltimore, Md.	May 25, 1978 Cristobal, C.Z.
USNS PVT JR Towle	May 26, 1978 Cristobal, C.Z.	June 26, 1978 Bayonne, N.J.

14. Petitioner contended that the period during which he was not on sea duty, between September 10, 1975 and April 11, 1976, was spent predominantly on vacation with friends in Boston and San Francisco. The latter part of such period was spent in the Staten Island Marine Hospital for surgery in New York.

15. Petitioner contended that the period during which he was not on sea duty, between December 6, 1977 and December 20, 1977 was spent in New York for the purpose of having various licenses renewed. During this period he claimed he stayed at the Seaman's Church Institute.

16. The record contains no information with respect to where petitioner resided during other periods between sea duty assignments.

17. Petitioner contended that the apartment on Newkirk Avenue in Brooklyn, New York was the home of a friend. He claims he never stayed there or stored his possessions there. The address, he argued, was used only for mailing purposes.

18. Petitioner contended that he was a domiciliary of Brookline, Massachusetts during the years at issue and did not become a New York domiciliary until

February 15, 1979, when he retired from naval service and established a residence at 165-27 85th Avenue, Jamaica, New York.

19. Petitioner has always been a single individual. He owned no furniture prior to 1979. He never voted during an election in this country and has never obtained a driver's license.

20. Petitioner contended that he had no home on land during his service with the Navy.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to corresponding sections of Article 30.

B. 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)].

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

D. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that his domicile during the years at issue was other than the State and City of New York. Accordingly, petitioner is hereby deemed to have been a New York domiciliary during the years 1976 and 1977.

E. That section 605(a) of the Tax Law defines a resident individual as an individual:

"(1) 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."

F. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he has met the requirements set forth in section 605(a) of the Tax Law. Accordingly, petitioner is deemed to have been a resident of the State and City of New York during the years 1976 and 1977.

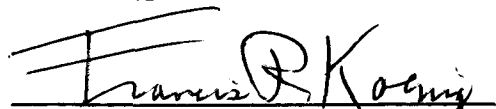
G. That the petition of Voldemars Plosis is denied and the formal notices of disallowance dated September 29, 1980 and March 30, 1981 are sustained.

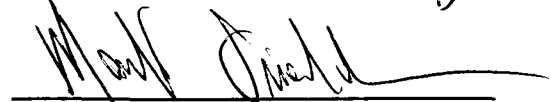
DATED: Albany, New York

MAR 09 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER