

STATE TAX COMMISSION

State of New York :

County of Albany :

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	:	
Jean & Lorraine Potvin	:	
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	:	
1978.	:	

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 Raphael P. Greenspan, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raphael P. Greenspan
Macri, Greenspan & Moramarco
1551 Kellum Place
Mineola, NY 11501

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

Nicholas L. 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

Jean & Lorraine Potvin
24 Longwood Drive
Huntington Station, NY 11746

Dear Mr. & Mrs. Potvin:

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
Raphael P. Greenspan
Macri, Greenspan & Moramarco
1551 Kellum Place
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEAN POTVIN and LORRAINE POTVIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

Petitioners, Jean Potvin and Lorraine Potvin, 24 Longwood Drive, Huntington Station, New York 11746, 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 1978 (File No. 36789).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 10, 1984 at 1:30 P.M., with all briefs to be submitted by September 18, 1984. Petitioners appeared by Raphael P. Greenspan, Esq.. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether, during the year 1978, petitioners maintained a permanent place of abode in New York and spent in the aggregate more than one hundred eighty-three days in New York, and thus were taxable as resident individuals of New York.

FINDINGS OF FACT

1. Petitioners, Jean and Lorraine Potvin, filed a New York State Income Tax Nonresident Return for the year 1978 on which they reported New York wage and salary income in the amount of \$28,085.00 earned by Jean Potvin as a professional hockey player. Said return reflected a refund claimed by petitioners

in the amount of \$1,363.00. Petitioners also filed a U.S. Individual Income Tax Return (Form 1040) for said year.

2. On September 16, 1981, the Audit Division issued to petitioners, Jean Potvin and Lorraine Potvin,¹ a Statement of Audit Changes proposing personal income tax due of \$4,669.34, plus penalty, pursuant to section 685(a)(1) of the Tax Law, and interest for a total due of \$5,888.69. Said statement explained the basis for the asserted deficiency as follows:

"A domicile is the place that you intend to have as your fixed and permanent home, the place you intend to return whenever you may be absent. You can have only one domicile. A domicile, once established, continues until you move to a new location with the bona fide intention of making your fixed and permanent home there. If you move to a new location and intend to stay there only for a limited amount of time, even though your stay may be of a relatively long duration, your domicile does not change.

A change of resident status must be determined by the facts. To effect a change in resident status, there must be both an intent to change your domicile as well as an actual change. In deciding whether both requirements are met, your acts, rather than your statements, will be the determining factor.

It is true that a professional hockey player's domicile may change more frequently than the average person due to the transient nature of his profession. However, since you owned your home in New York State for the entire year and you have not furnished any details in regards to its disposition, you have been deemed to be a full year resident of New York State.

Since you have been deemed to be a full year resident of New York State and you paid taxes to the States of Minnesota, Ohio and Oklahoma, you are entitled to a resident credit for such taxes paid."

A Notice of Deficiency was subsequently issued to petitioners on June 5, 1982.

¹ Lorraine Potvin is a party to this proceeding merely because she is the wife of Jean Potvin and filed a joint return with him. Accordingly, the term petitioner hereinafter will refer only to Jean Potvin.

3. Petitioner Jean Potvin was a domiciliary and citizen of Canada during the year in issue. As a Canadian citizen, Mr. Potvin was required to possess a visa to work in the United States as a professional hockey player. The visa permitted him to remain in the United States only temporarily.

4. Petitioner was employed by the New York Islanders ("Islanders") from the beginning of 1973 until January 10, 1978, at which time he was traded to the Cleveland Barons ("Barons"). Subsequently, the Barons merged with the Minnesota North Stars ("North Stars") hockey team. All three teams were associated with the National Hockey League, which has an annual hockey season spanning parts of two years. For the 1977-1978 season, petitioner played for the Islanders and the Barons, while for the 1978-1979 season he played solely for the North Stars.

5. The Islanders required Jean Potvin to live on Long Island for ten months of the year. Petitioners encountered difficulty in obtaining a lease on a home for a period of less than one year, and thus in August of 1974, petitioner and his wife purchased a house located in Huntington Station, New York, in which they lived only during the hockey season (approximately September 1 to June 1 of each year). Petitioner asserted that he purchased the house as an investment and as a convenience rather than to establish a permanent home.

6. After the hockey season ended in Cleveland in April of 1978, petitioner Jean Potvin came back to New York for several weeks before returning to Canada. Petitioner returned to New York around July 1, 1978, and in mid-September of the same year, he left for Minnesota to go to training camp. While in training camp, all players were housed in a hotel away from their families. Near the end of training camp, petitioner was injured. When he was able to resume

skating, the North Stars sent him to Oklahoma City for a two and a half week period of conditioning after which he returned to Minnesota.

7. At the close of each season, petitioner and his family would return to Canada where they resided with petitioner's family. Petitioner contributed to household expenses there on a weekly basis and to his parents' support. His visa expired at the end of each hockey season (approximately June 1 of each year) and he was required to return the visa to immigration authorities when he went across the border back to Canada. Each professional hockey team made arrangements for its foreign players to pick up their visas at their port of entry into the United States.

8. In November of 1978, petitioner sought to find a home for himself and his family in Minnesota. Unable to find a suitable house to purchase, he rented a large three bedroom house in Minneapolis, Minnesota in November of 1978. His wife and daughter joined him there at a later date. Petitioner continued to search for a home to purchase in the Minneapolis area into the fall of 1979, and looked at approximately ten to fifteen houses. Petitioner submitted letters from two real estate agencies; one agency assisted petitioner in efforts to locate a house in the Minneapolis area and the other assisted petitioner in efforts to sell his home in Huntington Station, New York. Two other letters also were submitted from individuals interested in purchasing petitioner's home in New York during the early months of 1978. However, petitioners never purchased a house in Minnesota and retained their New York house, which they continue to own.

9. Petitioner spent in the aggregate approximately 105 days in New York State during 1978.

10. In a letter dated March 13, 1980, petitioner stated that his residences during 1978 were as follows:

January 1 to January 10	Huntington Station, New York
January 10 to April 11	Cuyahoga Falls, Ohio
April 11 to September 14	Huntington Station, New York
September 15 to December 31	Apple Valley, Minnesota

For the year 1978, petitioner filed nonresident income tax returns with the States of Ohio, New York, and Oklahoma (the latter return indicated that petitioner was a resident of Minnesota) and paid taxes to said states. Petitioner also filed an income tax return with and paid tax to the State of Minnesota.

11. In their original petition filed on May 20, 1982, petitioners asserted the following:

"When the Cleveland and Minnesota hockey franchises merged after May 1978, the taxpayer arranged to move to Minnesota. He moved to Minnesota on September 15, 1978."

CONCLUSIONS OF LAW

A. That petitioner had only one domicile during the year 1978, and that domicile was Canada. [20 NYCRR 102.2(d)(4)].

B. That Tax Law section 605(a) and 20 NYCRR 102.2(e), as in effect during the year at issue, in pertinent part provided:

"A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse... Also, a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. For example, an individual domiciled in another state may be assigned to his employer's New York office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in New York during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in New York because his place of abode here is not permanent... However, if his assignment to his employer's New York office is not for a fixed or limited period, his New York apartment will be deemed a permanent place of abode and he will be a resident for tax purposes if he spends more than 183 days of the year in New York."


C. That the residence owned and maintained by petitioner in Huntington Station, New York, from August of 1974 to the present time, constituted a permanent place of abode during the year 1978; however, inasmuch as petitioner, a nondomiciliary, spent less than 183 days in New York State during 1978, he was taxable as a nonresident for said year.

D. That the petition of Jean Potvin and Lorraine Potvin is granted and the Notice of Deficiency issued on June 5, 1982 is cancelled. Petitioners are entitled to a refund for the year 1978 based on their nonresident return as filed.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER