

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marie A. Twomey :

AFFIDAVIT OF MAILING

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 Chapter 46, Title T of the :
Administrative Code of the City of New York 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 July, 1984, he served the within notice of Decision by certified mail upon Marie A. Twomey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marie A. Twomey
2313 East 14th St.
Brooklyn, NY 11229

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
31st day of July, 1984.

David Parchuck

Caroline A. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Marie A. Twomey
2313 East 14th St.
Brooklyn, NY 11229

Dear Ms. Twomey:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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	:	
	:	
MARIE A. TWOMEY	:	DECISION
	:	
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 Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1978.	:	

Petitioner, Marie A. Twomey, 2313 East 14th Street, Brooklyn, New York 11229, 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 Chapter 46, Title T of the Administrative Code of the City of New York for the year 1978 (File No. 37886).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1984 at 1:15 P.M. Petitioner, Marie A. Twomey, appeared by her spouse, Robert Twomey. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether, during the year 1978, petitioner was domiciled in New York State and New York City and either maintained a permanent place of abode in the State and City, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in the State and City, and was thus a resident individual under Tax Law section 605(a)(1)(A) and section T46-105.0(a)(1)(A) of Chapter 46, Title T of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioner herein, Marie A. Twomey, timely filed a New York State and New York City income tax resident return for the year 1978 wherein she reported total income of \$5,915.00. Petitioner excluded from reported total income the sum of \$2,671.00, said amount representing wages she earned while living and working in the State of Georgia. The return filed by petitioner did not indicate that she had changed her resident status at any time during the year in question.

2. On March 30, 1982, the Audit Division issued a Notice of Deficiency to petitioner for 1978, imposing additional New York State and New York City tax due of \$199.69, plus interest of \$56.49, for an alleged total due of \$256.18. The Notice of Deficiency was premised on an explanatory Statement of Audit Changes, dated June 9, 1981, wherein the Audit Division increased petitioner's taxable income by \$2,671.00 since "(t)he starting point for computing the New York tax liability is Federal adjusted gross income".

3. In July, 1977, petitioner and her husband, Robert Twomey, moved from Brooklyn, New York to Athens, Georgia. The move to Georgia was prompted due to the fact that Robert Twomey had been accepted into a two-year masters program at the University of Georgia. Petitioner and her husband lived in Georgia from July, 1977 to the end of July, 1978, at which time they returned to Brooklyn, New York due to family obligations caused by the death of petitioner's father.

4. While living in Georgia, petitioner and her husband rented a partially furnished apartment on campus from the University of Georgia. Petitioner registered her car with the State of Georgia, obtained a Georgia driver's license, maintained a checking account with the First National Bank of Athens,

Georgia, and she also obtained full-time employment as a secretary at the University of Georgia.

5. Petitioner's husband was pursuing a graduate degree in the field of entomology, concentrating his studies on insect control in the southern agricultural region. Although petitioner did not appear at the hearing to offer her testimony, Mr. Twomey testified that he and his wife intended "...after finishing graduate school to pursue [a career in agricultural entomology] in another State outside of New York, although I can't say that I wouldn't have returned to New York if a job opened up...".

6. Petitioner filed a part-year resident income tax return with the State of Georgia for the year 1978, indicating that she was resident of said State from January, 1978 to May, 1978. Total income reported as taxable to Georgia was \$2,670.65 and total taxes paid to Georgia amounted to \$6.70. At the hearing held herein, the Audit Division conceded that should petitioner be found to be taxable as a full-year resident individual, that she is entitled, pursuant to section 620 of the Tax Law, to a credit of \$6.70 for taxes paid to Georgia.

CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) provides 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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time..."

B. That the burden of proof is upon petitioner to show that the necessary intention to effect a change in domicile existed [Tax Law, §689(e); Title T, §T46-189.0(e); 20 NYCRR 102.2(d)(2)]. "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..." (Bodfish v. Gallman, 50 A.D.2d 457).

C. That petitioner has failed to sustain the burden of proof to show that she changed her domicile from New York to Georgia. The limited evidence submitted by petitioner does not clearly demonstrate that she had a bona fide intention of establishing a fixed and permanent home in Georgia. In fact, the record herein supports that petitioner moved to Georgia for a limited time while her husband completed a two-year graduate program. Accordingly, petitioner was domiciled in New York State and New York City for the year 1978.

D. That section 605(a)(1)(A) of the Tax Law and section T46-105.0(a)(1)(A) of the Administrative Code of the City of New York both define a resident individual as one who is domiciled in the State or City unless he satisfies all three of the following conditions:

1. maintains no permanent place of abode in the State or City,
2. maintains a permanent place of abode elsewhere, and,
3. spends not more than 30 days in the State or City during the taxable year.

That petitioner returned to New York State and New York City in July of 1978 and, therefore, she failed to satisfy any of the conditions set forth in section 605(a)(1)(A) of the Tax Law and section T46-105.0(a)(1)(A) of the Administrative Code of the City of New York. Accordingly, petitioner is taxable as a resident individual for the year 1978.

E. That pursuant to Finding of Fact "6", supra, petitioner is entitled to a resident tax credit of \$6.70 for taxes paid to Georgia.

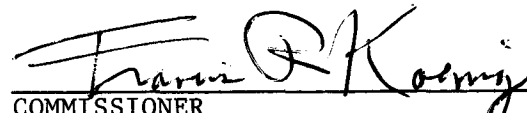
F. That the petition of Marie A. Twomey is granted to the extent indicated in Conclusion of Law "E", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER