

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Frederick W. Ford :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax and New
York City Personal Income Tax under Articles 22 :
and 30 of the Tax Law for the Year 1976.

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 10th day of July, 1985, he served the within notice of decision by certified mail upon Frederick W. Ford, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick W. Ford
10117 Campus Way South
Upper Marlboro, MD 20772

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
10th day of July, 1985.

David Parchuck

Annie O'Hagan

Authorized to administer oaths
pursuant to Tax Law section 174

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

July 10, 1985

Frederick W. Ford
10117 Campus Way South
Upper Marlboro, MD 20772

Dear Mr. Ford:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FREDERICK W. FORD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
and New York City Personal Income Tax under	:	
Articles 22 and 30 of the Tax Law for the Year	:	
1976.	:	

Petitioner, Frederick W. Ford, 10117 Campus Way South, Upper Marlboro, Maryland 20772, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax and New York City personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 23897).

On February 27, 1985, petitioner advised the State Tax Commission, in writing, that he desired to waive a formal hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether during the year 1976, petitioner was domiciled in the State and City of New York and either maintained a permanent place of abode in the State and City of New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than thirty days in the State and City of New York, and was thus a resident individual under sections 605(a)(1) and 1305(a)(1) of the Tax Law.

FINDINGS OF FACT

1. Frederick W. Ford (hereinafter "petitioner") filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for the

year 1976 whereon he indicated that he was a resident of New York State and City for five (5) months of said year. Annexed to said return was a Schedule for Change of Resident Status whereon petitioner indicated that he was a New York resident from January 1, 1976 to May 5, 1976. Two wage and tax statements submitted therewith show that petitioner received wages of \$37,931.25 from the U.S. Department of Justice. Such statements report that of said amount, \$25,116.85 was derived from Thailand and \$12,814.40 was derived from New York. On his New York return petitioner's total New York income was reported as \$12,814.40.

2. On May 15, 1978, the Audit Division issued Statement of Audit Changes to petitioner wherein it held his entire salary of \$37,931.25 subject to New York State and City personal income taxes on the basis that he was a New York resident for the entire year 1976. Accordingly, a Notice of Deficiency was issued against petitioner on August 10, 1978 asserting additional New York State and City personal income taxes of \$2,963.54, plus interest of \$332.65, for a total due of \$3,296.19.

3. Petitioner initially contended that he changed his domicile and residence from New York to Bangkok, Thailand in May, 1976. However, in subsequent correspondence he alleged that he became a bonafide domiciliary of Durham, North Carolina prior to his removal from New York to Thailand.

4. Petitioner, a single individual, has been employed by the Federal Government since 1953. On April 10, 1966 he was promoted to the position of Criminal Investigator with the Food and Drug Administration, Bureau of Drug Abuse Control, and transferred from a duty station in Detroit, Michigan to the New York Field Station in New York City.

5. Petitioner was continuously employed at the New York Field Station from April 10, 1966 until May 13, 1976, at which time he was further promoted and reassigned by the Department of Justice, Drug Enforcement Administration to the Bangkok Regional Office, Bangkok, Thailand.

6. Petitioner filed New York State income tax resident returns for the years 1974 and 1975 whereon he reported his home address as 185 Hall Street, Brooklyn, New York 11205. Other than this, the record is devoid of all information with respect to petitioner during the aforesaid ten (10) year period that he resided in New York.

7. On December 15, 1977, petitioner submitted a letter in response to an Audit Division inquiry of November 30, 1977 concerning his removal from New York to Thailand. Said letter contained, inter alia, the following statements:

- a. "I am a U.S. citizen."
- b. "I did relinquish my domicile in New York. I intended to stay in foreign country (Thailand) for as long as required by my employer (DEA/Justice). A normal tour of duty here is two to three years."
- c. "I intend to return to the U.S. when my tour of duty is completed."
- d. "I established residence in Bangkok, Thailand as permitted by the attached travel order and authorization for household move. I did not enter Thailand as an immigrant."
- e. "I entered Thailand under a Section 51 Resident Permit. My stay is permitted for two years, subject to renewal."
- f. "I do own a house in the U.S., but I do not maintain a residence there. The house is located at 20224 Redfern, Detroit, Michigan. It is co-owned and occupied by my niece...there are no other occupants."

8. The only other information contained in the file with respect to the period during which petitioner lived in Thailand is that his dwelling place was a "rented house or apartment" and that his "visa expires September 30, 1978,

but will be extended to 1980".

9. In September 1979, petitioner was reassigned from the Bangkok Regional Office to Washington D.C.

10. Petitioner alleged that he became a bonafide domiciliary of North Carolina prior to his May, 1976 move from New York to Bangkok, Thailand. To support such allegation he submitted documentation on July 21, 1980 and November 30, 1984 evidencing that:

- a. In early 1970, Wallace Ford jointly purchased property in Durham, North Carolina with Mayme Harris Perry.

The record contains no information with respect to petitioner's relationship to either of said individuals.

- b. He received property tax and water main assessments during the years 1977 through 1980 from the City and County of Durham, North Carolina with respect to property located on "Brandon Road". Said assessments were addressed to petitioner at 404 Brant Street, Durham, North Carolina.
- c. He used the Brant Street address as his "home of record" on certain catalog sale order forms during 1977 while he was stationed in Thailand.
- d. At the time of his transfer to Bangkok, Thailand his "place of actual residence", as reported on his transportation agreement, was 404 Brant Street, Durham, North Carolina.
- e. During 1978 petitioner owned a vacant lot on Alfred Street in Durham, North Carolina.
- f. He maintained a joint savings account with Mayme Harris Perry from 1976 through 1980 at the Central Carolina Bank & Trust Company.

11. The Audit Division's inquiry letter of November 30, 1977 posed the following question:

"Did you maintain a residence in the United States while residing abroad? If the answer is yes, indicate the address and state whether it was rented. Also, list name and relationship to you of each occupant."

Petitioner's response on December 15, 1977 related to a house owned in Detroit, Michigan (see Finding of Fact "7", supra). No mention was made of the Durham, North Carolina property.

CONCLUSIONS OF LAW

A. That "to create a change of domicile, both the intention to make the new location a fixed and permanent home and actual residence at such location, animus et factum, must be present; residence without intention, or intention without residence, is of no avail." (17 N.Y. Jur., Domicile and Residence, §12; Matter of Newcomb, 192 N.Y. 238, 84 N.E. 950).

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to sections 689(e) of Article 22 of the Tax Law (which is incorporated into Article 30 by section 1312(a)) to show that he was ever a bonafide domiciliary of North Carolina.

C. That a domicile once established continues until the person in question moves to a new location with the bonafide 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 (20 NYCRR 102.2(d)(2)). A United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return (20 NYCRR 102.2(d)(3)).

D. That petitioner was domiciled in the State and City of New York during the entire year 1976.

E. That section 605(a) of Article 22 of the Tax Law provides that:

"A resident individual means 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..."

Section 1305(a)(1) of Article 30 of the Tax Law provides a substantially similar definition for a City resident individual.


F. That petitioner spent more than thirty days of taxable year 1976 in New York State and City. Furthermore, he has failed to show that he maintained no permanent place of abode in New York State and City during 1976 or that he maintained a permanent place of abode elsewhere during any part of said year. Accordingly, petitioner was a resident individual of New York State and New York City during the entire year 1976.

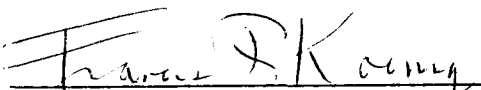
G. That the petition of Frederick W. Ford is denied and the Notice of Deficiency issued August 10, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUL 10 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER