

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Loretta Garcia

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

Loretta Garcia
99 Summers St.
Oyster Bay, NY 11771

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

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of

Loretta Garcia :

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for Redetermination of a Deficiency or Revision :
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 10th day of July, 1985, he served the within notice of decision by certified mail upon Bernard R. Panfel, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard R. Panfel
Panfel, Merritt & Co.
8 Freer St.
Lynbrook, NY 11563

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
10th day of July, 1985.

David Parchuck

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 10, 1985

Loretta Garcia
99 Summers St.
Oyster Bay, NY 11771

Dear Ms. Garcia:

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
Bernard R. Panfel
Panfel, Merritt & Co.
8 Freer St.
Lynbrook, NY 11563
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LORETTA GARCIA	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Year	:	
1978.	:	

Petitioner, Loretta Garcia, 99 Summers Street, Oyster Bay, New York 11771, 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 for the year 1978 (File No. 39002).

On October 15, 1984, petitioner waived her right to a small claims hearing and requested that a decision be rendered based on the entire record contained in her file. The Law Bureau submitted its written arguments on October 23, 1984. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether petitioner incurred a change of domicile and resident status from New York to New Jersey on July 1, 1978, or was a domiciliary and resident of New York for the entire 1978 tax year.

FINDINGS OF FACT

1. Petitioner herein, Loretta Garcia, timely filed a New York State Income Tax Resident Return for 1978 reporting thereon a total New York income of \$8,479.12. Said return did not indicate that petitioner had incurred a change of resident status during 1978 and attached to the return was petitioner's

handwritten note which indicated that "I maintain N. Jersey residence for business only -- living residence is Lindenhurst, N.Y.". The address listed by petitioner on her 1978 return was "152 N. Wellwood Ave., Lindenhurst, N.Y. 11757". The wage and tax statement attached to petitioner's return from E. L. Management Corporation reported "State wages, tips, etc." of \$8,479.12. Petitioner's address, as shown on the wage and tax statement, was "1590 Anderson Ave., Apt. 3F, Fort Lee, N.J."

2. A computer tape match between the Internal Revenue Service and the Audit Division revealed that petitioner's Federal income tax return for 1978 reported a Federal adjusted gross income of \$20,238.00. Petitioner's address, as shown on the 1978 Federal income tax return, was 152 North Wellwood Avenue, Lindenhurst, New York.

3. Based on the computer tape match, the Audit Division, on May 28, 1981, issued a Statement of Audit Changes to petitioner for 1978 increasing her total New York income to \$20,238.00 since "The starting point for computing the New York tax liability is Federal adjusted gross income". On March 30, 1982, the Audit Division issued a Notice of Deficiency to petitioner for 1978 premised on the aforementioned Statement of Audit Changes. Said Notice proposed additional tax due of \$959.68, plus interest of \$271.53, for a total allegedly due of \$1,231.21.

4. Petitioner maintains that she changed her domicile and resident status from New York to New Jersey effective July 1, 1978 and that the \$11,759.00 difference between Federal adjusted gross income of \$20,238.00 and reported total New York income of \$8,479.00 represents wages earned outside of New York while a resident of New Jersey.

5. Petitioner was employed by E. L. Management Corporation for the entire 1978 tax year. In a letter to her accountant dated September 28, 1983, petitioner stated that:

"In June, 1978 I was promoted to Account Executive by my employer, Estee' Lauder. At that time, I was residing 152 No. Wellwood Ave, Lindenhurst. N.Y. The sales region involved in my promotion was New Jersey and Philadelphia. My regional sales manager at Estee' Lauder requested that I relocate to New Jersey in order to better service the territory."

6. On June 14, 1978, petitioner entered into a one year lease agreement for apartment 3F located at 1590 Anderson Avenue, Fort Lee, New Jersey. Said lease agreement was for the period July 1, 1978 through June 30, 1979.

7. On July 12, 1978, petitioner opened a checking account at United Jersey Bank in Fort Lee, New Jersey. Petitioner also maintained a checking account at Long Island Trust Company in Lindenhurst, New York.

8. Petitioner, on April 16, 1979, filed a 1978 resident income tax return with the State of New Jersey reporting thereon New Jersey gross income of \$11,759.00. Said return listed petitioner's address as 1590 Anderson Avenue, Apt. 3-F, Fort Lee, New Jersey, and also indicated that petitioner was a resident of New Jersey for the period July 1, 1978 to December 31, 1978. Petitioner's 1978 New Jersey return computed a New Jersey income tax liability of \$192.00 and, in its Answer, the Law Bureau concedes that petitioner is entitled to a resident tax credit of \$192.00 for taxes paid to New Jersey. Said Answer states that petitioner's additional New York State income tax liability should be reduced from \$959.68 to \$767.68, plus interest.

9. The record herein contains contradictory statements concerning petitioner's residence for 1978. As indicated in Finding of Fact "1", supra, petitioner attached a handwritten note to her 1978 New York State return indicating that the New Jersey residence was maintained for business only and

that her "living residence" was in Lindenhurst, New York. Petitioner subsequently asserts that she changed her residence to New Jersey effective July 1, 1978. The record contains no evidence addressing this contradiction nor does the record contain any evidence explaining why petitioner filed 1978 New York State and Federal income tax returns listing her address as Lindenhurst, New York. The record is likewise devoid of any evidence as to the disposition, if any, of petitioner's New York abode.

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 section 689(e)].

"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).

That "...to effect a change of domicile, there must be an actual change of residence, coupled with an intention to abandon the former domicile and to acquire another" (Aetna Nat'l. Bank v. Kramer, 142 A.D. 444).

C. That petitioner has failed to sustain her burden of proof to show that she intended to abandon her New York domicile and to acquire a new domicile in New Jersey. Since petitioner was a New York domiciliary for all of 1978 and since she maintained a permanent place of abode within the State and also spent

in excess of 30 days within New York, she is properly considered a resident individual of New York pursuant to section 605(a)(1) of the Tax Law, for the entire year.

D. That in accordance with Finding of Fact "8", supra, the Notice of Deficiency dated March 30, 1982 is reduced by \$192.00 to allow petitioner credit for taxes paid to New Jersey (Tax Law section 620).

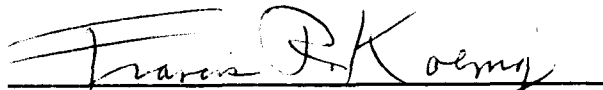
E. That the petition of Loretta Garcia is granted to the extent indicated in Conclusion of Law "D", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 10 1985


PRESIDENT


COMMISSIONER


COMMISSIONER