

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Solomon & Dorothy Jaffe : 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Solomon & Dorothy Jaffe, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Solomon & Dorothy Jaffe
1360 S. Ocean Blvd.
Pompano Beach, FL 33062

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
6th day of February, 1985.

David Parchuck

Bonnie R. Hagelma

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Solomon & Dorothy Jaffe : 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Lawrence H. Roth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
2001 Marcus Ave., Suite 225 E
Lake Success, NY 11042

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
6th day of February, 1985.

David Parchuck

Bennett R. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Solomon & Dorothy Jaffe
1360 S. Ocean Blvd.
Pompano Beach, FL 33062

Dear Mr. & Mrs. Jaffe:

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
Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
2001 Marcus Ave., Suite 225 E
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SOLOMON JAFFE AND DOROTHY JAFFE	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Fiscal Year Ended	:	
February 28, 1979.	:	

Petitioners, Solomon Jaffe and Dorothy Jaffe, 1360 South Ocean Boulevard, Pompano Beach, Florida 33062, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the fiscal year ended February 28, 1979 (File No. 34023).

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 June 15, 1984 at 10:45 A.M. Petitioner appeared by Lawrence H. Roth, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether, during the fiscal year March 1, 1978 to February 28, 1979, petitioners were 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 were thus resident individuals under Tax Law section 605(a)(1).

FINDINGS OF FACT

1. Petitioners, Solomon Jaffe and Dorothy Jaffe, filed a New York State Income Tax Nonresident Return for the fiscal year ended February 28, 1979 whereon they reported their address as 1360 South Ocean Boulevard, Pompano

Beach, Florida 33062. On such return petitioner Solomon Jaffe allocated his salary income to sources within and without New York State on the basis that he worked fifty seven (57) out of a total of two hundred seven (207) days in New York State. Attached to said return were three (3) wage and tax statements issued to petitioner Solomon Jaffe. Each of said statements, which were issued by Yonkers, New York employers, reported his address as 30 Forbes Boulevard, Eastchester, New York 10709. New York State income tax was withheld by each employer.

2. On August 5, 1980, the Audit Division issued a Statement of Audit Changes to petitioners wherein their tax liability for said year was computed on the basis that they were full year New York State residents. Accordingly, a Notice of Deficiency was issued against petitioners on December 24, 1980 asserting additional New York State personal income tax of \$769.99, plus interest of \$109.49, for a total due of \$879.48.

3. Petitioner Solomon Jaffe submitted a letter dated October 6, 1980 in response to the Audit Division's inquiry letter of December 12, 1979. In his letter, Solomon Jaffe alleged, inter alia, that:

- a. He is employed as an attorney and an executive.
- b. He has been domiciled in Florida since 1974 and his sole reason for filing as a resident of New York State during the four years preceding the year at issue was that during each of those years he spent more than 183 days in New York State.
- c. He and his wife were residents of Florida during the year at issue herein.
- d. He and his wife own a home at 1360 South Ocean Boulevard, Apartment 1404, Pompano Beach, Florida 33062, which they have furnished.
- e. He and his wife own a home at 30 Forbes Boulevard, Eastchester, New York 10709, which is also furnished and which they maintained while living in Florida.

- f. His children are married and reside with their own families in New York State.
- g. He has been living in New York State for 66 years.
- h. He has executed a last will and testament wherein his residence was reported as the State of Florida.
- i. He votes at Pompano Beach, Florida.
- j. His automobile is registered in Florida.
- k. He maintains both a New York State and a Florida driver's license.
- l. He spent 159 days in New York State during the year at issue.
- m. His and his wife's intentions "are to reside in Florida as our principal place of residence and to sell our New York home, furniture and belongings."

4. Several of the questions put forth in the Audit Division's inquiry letter of December 12, 1979 were written in the present tense rather than with respect to the year at issue. Accordingly, the corresponding answers in petitioner Solomon Jaffe's response of October 6, 1980 were also given in the present tense. Therefore, it cannot be determined whether those answers given in the present tense apply as well to the year at issue herein.

5. Petitioner Solomon Jaffe was present at the hearing held herein. Although he was advised of the importance of his testimony, he chose not to testify but rather to rest on the documentation submitted.

6. The following documents were received in evidence during the hearing held herein:

- a. Certificate of Registration, Broward County, Florida - Establishes that Solomon Jaffe was properly registered to vote in Broward County on June 5, 1978. Said document further shows that petitioner was sixty-nine years old on said date and that he has voted in Broward County in six elections subsequent to the date of registration.
- b. Original Application for Tax Exemption - Said document, filed, January 30, 1979, shows petitioners' address as 1360 South Ocean Boulevard, Pompano Beach, Florida 33062 and reports the property for which exemption was claimed as #1404, The Renaissance of

Pompano Beach. Said document further shows the date of deed as June 27, 1974 and the date of occupancy as November, 1977. With respect to this document petitioner stated "I call your attention to the two dates. The first date is when I became a resident (of Florida). The second date is the date when I claimed the domicile there."

- c. Florida D/L Exam & Application - Establishes that Solomon Jaffe received a Florida driver's license on February 5, 1979.
- d. Examination / Renewal Fee Receipt - Establishes that Dorothy Jaffe held a Florida driver's license. However, it cannot be determined from said document when such license was initially issued.
- e. Voter Registration Document - Establishes that Solomon Jaffe's voter registration for the town of Eastchester, New York was cancelled on, what appears to be, either June 26, 1978 or June 26, 1979.
- f. Broward County Voter Registration Cards for both Solomon Jaffe and Dorothy Jaffe - Establishes that their registration date was June 5, 1978.

7. In a letter submitted by petitioner Solomon Jaffe on October 28, 1982, he stated that "I purchased my home in Florida in June, 1974. However, I did not establish my Florida domicile until I filed for my Broward County Voter Registration on June 5, 1978, four years later."

CONCLUSIONS OF LAW

A. 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)]. 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. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. The fact that a person registers and votes in one place is important but not necessarily conclusive... [20 NYCRR 102.2(d)(2)].

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that they effected a change

of domicile from New York State to the State of Florida either prior to or during the year at issue herein.

C. That petitioner Solomon Jaffe's failure to testify leads to the inference that his testimony would not have supported his version of the case and authorizes the strongest inference that the opposing evidence supports. (Matter of Jose Rodrigues, State Tax Commission, November 6, 1981).

D. That for the full fiscal year ended February 28, 1979, petitioners Solomon Jaffe and Dorothy Jaffe were domiciled in the State of New York.

E. That section 605(a) of the Tax Law provides, in pertinent part, 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..."

F. That petitioners have failed to meet the requirements provided in Section 605(a)(1) of the Tax Law. Accordingly, they were resident individuals of the State of New York during the entire fiscal year March 1, 1978 to February 28, 1979.

G. That the petition of Solomon Jaffe and Dorothy Jaffe is denied and the Notice of Deficiency issued December 24, 1980 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT

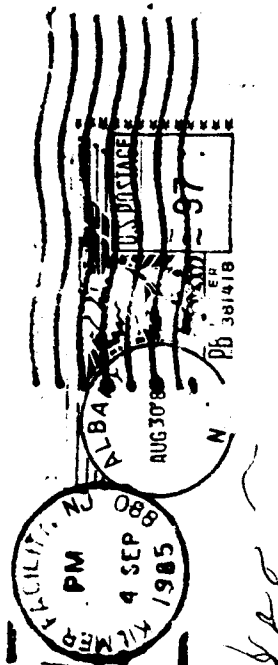

COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

_____ (Printed name)
_____ (Signature)
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_____ (Typed address)
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_____ (Typed state)
_____ (Typed zip)

~~Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
333 Thornall St.
Edison, NJ 08837~~



CERTIFIED

601 169 560 2

MAIL

August 30, 1985

Solomon & Dorothy Jaffe
1360 S. Ocean Blvd.
Pompana Beach, FL 33062

Dear Mr. & Mrs. Jaffe:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 690 of the Tax Law, any proceeding in court to review this decision must be commenced 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Building 9, State Campus, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Very truly yours,



ROBERT F. MULLIGAN
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative
Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
333 Thornall St.
Edison, NJ 08837
Taxing Bureau's Representative

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STATE OF NEW YORK

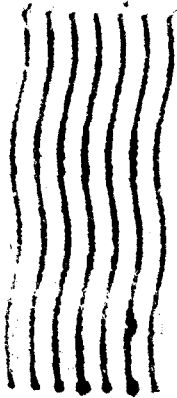
State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

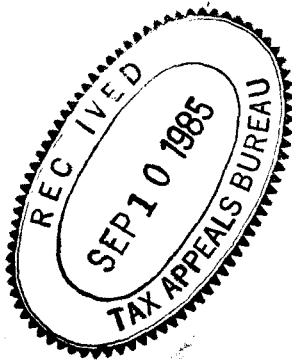
ALBANY, N. Y. 12227

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Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
333 Thornall St.
Edison, NJ 08837



CERTIFIED

P 095 691 109

MAIL



New York State Tax Commission
TAX APPEALS BUREAU

State Campus
Albany, New York 12227

John J. Sollecito, Director
(518) 457-1723

August 30, 1985

Solomon & Dorothy Jaffe
1360 S. Ocean Blvd.
Pompana Beach, FL 33062

Dear Mr. & Mrs. Jaffe:

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Very truly yours,

ROBERT F. MULLIGAN
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative
Lawrence H. Roth
Needleman, Roth, Edelman & Schacter
333 Thornall St.
Edison, NJ 08837
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Solomon & Dorothy Jaffe	:	<u>DEFAULT ORDER</u>
	:	85-H-20
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 1980 & 1981.	:	

Petitioner(s) Solomon & Dorothy Jaffe filed a petition 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 1980 & 1981. File No. 41913.

A hearing on the petition was scheduled before Allen Caplowaith, at the offices of the State Tax Commission, Two World Trade Center, Room 65-51, New York, New York 10047 on Thursday, May 23, 1985 at 1:15 p.m. Notice of said hearing was given to petitioner(s) and the representative of petitioner(s). Petitioner(s) did not appear at the hearing. A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance, it is

ORDERED that the petition of Solomon & Dorothy Jaffe be and the same is hereby denied.

DEFAULT ORDER
ADOPTED BY THE STATE TAX COMMISSION
ALBANY, NEW YORK
AUGUST 30, 1985