

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Brian C. & Patricia E. Loughlin :
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 1977. :

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 3rd day of October, 1985, he served the within notice of Decision by ~~certified~~ *AIR* mail upon Brian C. & Patricia E. Loughlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Brian C. & Patricia E. Loughlin
c/o Aramco
Box 5681
Dhahran, SAUDIA ARABIA

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
3rd day of October, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Brian C. & Patricia E. Loughlin : 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 1977. :

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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Jerrold S. Gattegno, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerrold S. Gattegno
Deloitte, Haskins & Sells
One World Trade Center
New York, NY 10048

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
3rd day of October, 1985.

David Parchuck

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

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

October 3, 1985

Brian C. & Patricia E. Loughlin
c/o Aramco
Box 5681
Dhahran, SAUDIA ARABIA

Dear Mr. & Mrs. Loughlin:

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: Petitioner's Representative
Jerrold S. Gattegno
Deloitte, Haskins & Sells
One World Trade Center
New York, NY 10048
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRIAN C. LOUGHLIN AND PATRICIA E. LOUGHLIN	:	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 1977.	:	

Petitioners, Brian C. Loughlin and Patricia E. Loughlin, c/o Aramco, Box 5681, Dhahran, Saudi Arabia, 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 1977 (File No. 31776).

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 November 29, 1984 at 9:15 A.M., with all briefs to be submitted by January 28, 1985. Petitioners appeared by Deloitte, Haskins & Sells (Jerrold S. Gattegno, C.P.A. and Seymour F. Bernstein, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether, for the year 1977, petitioners were domiciled in New York State and New York City 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 taxable as resident individuals

under Tax Law section 605(a)(1) and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioners herein, Brian C. Loughlin and Patricia E. Loughlin, filed both a 1977 New York State Income Tax Nonresident Return and a 1977 Nonresident Earnings Tax Return for the City of New York on March 8, 1979. On said returns, petitioners reported that they were residents of New York State and City for less than one month (1/1/77-1/26/77) and that no income was earned from New York State or City sources. Petitioners requested a full refund of State and City tax withheld of \$302.06.

2. The Audit Division did not process the refund as requested by petitioners, instead issuing a Statement of Audit Changes dated September 20, 1979 which proposed additional tax due of \$8,425.98, plus interest. On said Statement of Audit Changes, the Audit Division asserted that petitioners did not change their New York State and City domicile to Dhahran, Saudi Arabia, and that they did not qualify as nonresident individuals since they did not meet all three conditions contained in section 605(a)(1)¹ of the Tax Law and section T46-105.0(a)(1)¹ of the Administrative Code of the City of New York. In its computation of additional tax due, the Audit Division asserted that petitioners' New York State and City income was \$61,302.00 (petitioners' reported Federal adjusted gross income less a modification of \$48.00 for an income tax refund).

1 For the year at issue, a taxpayer who is domiciled in New York State and City is taxable as a resident individual unless he or she maintains no permanent place of abode in the State and City, maintains a permanent place of abode elsewhere and spends not more than 30 days of the year in the State and City, in which case the individual would be taxable as a nonresident.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on August 7, 1980, issued a Notice of Deficiency to petitioners for 1977, proposing additional tax due of \$8,425.98, plus interest of \$1,641.19, for a total allegedly due of \$10,067.17. In its answer to petitioners' perfected petition, the Audit Division reduced the proposed tax due to \$3,913.44, plus interest. The reduction in tax due was premised upon the allowance of moving expenses, employee business expenses and itemized deductions.

4. Petitioner Brian C. Loughlin, a Certified Public Accountant, was employed by the accounting firm of Haskins & Sells up until December 17, 1976. Prior to his resignation, Mr. Loughlin was Haskins & Sells' audit manager on its account with Arabian American Oil Company (more commonly known and hereinafter referred to as "Aramco").

5. Aramco was impressed with the work performed by Mr. Loughlin and offered him a full-time, permanent position in its main offices located in Saudi Arabia. Aramco is a Saudi Arabian corporation owned entirely by the Saudi Arabian government. It has no offices in New York State or City, although it does maintain a branch office in Houston, Texas.

6. Mr. Loughlin accepted the position with Aramco and, on January 26, 1977, he and his entire family left New York State for Saudi Arabia. Petitioners' house in Staten Island, New York was placed on the market for sale in October, 1976 and was ultimately sold sometime after petitioners had relocated to Dhahran, Saudi Arabia. Petitioners also sold their automobile prior to leaving for Saudi Arabia and they moved all of their personal belongings and furniture to Saudi Arabia.

7. Upon their arrival in Saudi Arabia, petitioners took up residence in housing which was owned and provided by Aramco. Petitioners, as of the date of

this hearing, have continuously lived in Saudi Arabia and resided in the housing provided by Aramco, a period extending almost eight years. Petitioners have not purchased or leased a home in Saudi Arabia.

8. Petitioner Brian C. Loughlin entered Saudi Arabia on a work permit and, thereafter, applied for and received a resident authorization card. Said card permitted Mr. Loughlin to move in and out of Saudi Arabia faster and with less scrutiny.

9. Petitioners were active in various business, social and religious clubs and organizations in Saudi Arabia. Petitioners let their New York State drivers' licenses expire and obtained Saudi Arabian licenses. They also paid taxes to Saudi Arabia and all of petitioners' children live in Saudi Arabia and attend school there.

10. Aramco is a major oil company and petitioner Brian C. Loughlin is one of its top financial officers. Mr. Loughlin's employment contract with Aramco was of an indefinite duration.

11. Petitioners have retained their United States citizenship and have not applied for Saudi Arabian citizenship. One factor which prevents petitioners from acquiring citizenship in Saudi Arabia is the requirement that they convert to the Muslim religion. Petitioners are not willing to convert to the Muslim religion.

12. Petitioners maintain that if they are found not to have changed their domicile to Dhahran, Saudi Arabia effective January 27, 1977, that they qualify as nonresidents of New York State and City since they met all three conditions mandated by section 605(a)(1) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York. During 1977, petitioners spent less than 30 days in New York State and City. Mrs. Loughlin gave birth on

January 4, 1977, and she and the new born baby were not able to travel until January 26, 1977, the date of petitioners' actual departure for Saudi Arabia. Petitioners assert that their residence in Saudi Arabia was available to them prior to January 1, 1977 and they therefore maintained a permanent place of abode outside New York State and City. Petitioners resided in their house in Staten Island, New York from January 1, 1977 to January 26, 1977; however, they assert that said house should not be considered a permanent place of abode due to their pending relocation to Saudi Arabia.

CONCLUSIONS OF LAW

A. That Tax Law §605(a)(1) defines a resident individual as one:

"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."

B. That petitioners' assertion of a change of domicile to a foreign country must meet an extremely heavy burden of proof, (Re Walter's Estate, 48 NYS2d 952 (1944)), as there is a presumption of a domestic domicile. Matter of Newcomb, 192 NY 238 (1908); Ratkowsky v. Browne, 267 AD 643, 646 (1944).

C. That 20 NYCRR 102.2(d) provides as follows:

"(1) 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. (2) 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... (3) ...However, 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 State who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York State domicile unless it is clearly shown that he intends to remain abroad permanently and not to return."

D. That petitioners' declarations and conduct do not support their contention that they intended to change their domicile effective January 27,

1977. Petitioners move to Saudi Arabia was substantially related to petitioner, Brian C. Loughlin's employment. Without his assignment from Aramco it cannot be said that they would be would be domiciliaries of Saudi Arabia. Matter of Shapiro v. State Tax Commission, 50 NY2d 822, 430 NYS2d 33, 407 NE2d 1330 (1980) reversed on dissent below 67 AD2d 191 (1979) in support of State Tax Commission decision, August 16, 1977; Mercer v. State Tax Commission, 92 AD2d 636 (1983).

E. That petitioners continued residence in Saudi Arabia since February 1977 does not necessarily evince an intent to be domiciled there from the date of their arrival. At most, petitioners' activities in 1977 would be mere preparation for a future domiciliary change. Matter of Klein v. State Tax Commission, 55 AD2d 982 (1977). In addition, although petitioner Brian C. Loughlin obtained a work permit and a resident authorization card, there is no evidence that he applied for an immigration visa. This further serves to evince a lack of intent to make Saudi Arabia their domicile. Matter of Bodfish v. Gallman, 50 AD2d 457 (3rd Dept. 1976).

F. That since petitioners were domiciled in New York State for all of 1977 and maintained a permanent place of abode in this State for part of 1977, therefore petitioners were residents of New York State for all of 1977, within the meaning and intent of section 605(a) of the Tax Law. Petition of Joseph E. Hobcroft and Annette Hobcroft, State Tax Commission, July 10, 1973.

G. That the petition of Brian C. Loughlin and Patricia E. Loughlin is granted to the extent set forth in Finding of Fact "3" and, except as so granted, is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

Rodrick W. Clun
PRESIDENT

Francis R. Koenig
COMMISSIONER

M. J. [Signature]
COMMISSIONER