

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William M. Morse & Rita T. Morse :
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 Years 1978 and 1979. :
:

AFFIDAVIT OF MAILING

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon William M. & Rita T. Morse, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William M. & Rita T. Morse
322 W. 57th St.
New York, NY 10019

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
7th day of November, 1985.

David Parchuck

Annia O'Hagan
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

William M. & Rita T. Morse
322 W. 57th St.
New York, NY 10019

Dear Mr. & Mrs. Morse:

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
WILLIAM M. MORSE and RITA T. MORSE

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 Years 1978 and 1979.

DECISION

Petitioners, William M. Morse and Rita T. Morse, 322 West 57th Street, Apt. 8C, New York, New York 10019, 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 years 1978 and 1979 (File No. 48024).

A 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 April 25, 1985 at 10:45 A.M., with all briefs to be submitted by June 25, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether petitioners incurred a change of domicile from New York City to either Rome, Italy or Algiers, Algeria effective May 7, 1978.

II. Whether petitioners are liable for a penalty for failure to timely file their New York State and City tax returns for the years 1978 and 1979.

FINDINGS OF FACT

1. On June 14, 1982, petitioners, William M. Morse and Rita T. Morse, filed separate New York State and City resident income tax returns for the years 1978 and 1979. On their 1978 return, petitioners indicated that they were domiciliaries and residents of New York State and City for four months, from January 1, 1978 to May 7, 1978. Petitioners' 1979 return indicated that they had reacquired status as domiciliaries and residents of New York State and City on May 1, 1979. Both returns excluded from New York income wages earned by William M. Morse while he was living and working overseas in Algiers, Algeria. Excluded income totalled \$14,179.00 and \$12,943.00 in 1978 and 1979, respectively.

2. On April 20, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1978 and 1979 which contained the following explanation:

"Based on the information available you were considered to be residents of New York State during the entire years 1978 and 1979.

Under New York State Law the domicile of a taxpayer does not change because of assignment of employment to a foreign country. A change of residence does not occur unless it is clearly and undisputably shown that the intention is to remain abroad permanently and never return to the United States. When a resident of New York State goes abroad under circumstances other than complete and permanent removal from the United States, the individual remains taxable as a resident of this state on all income received irrespective of the source.

Penalty is assessed under Section 685(a)(1) for failure to file your return on or before the prescribed due date."

On the aforementioned Statement, the Audit Division recomputed petitioners' 1978 and 1979 income tax liability including in New York income the wages earned by Mr. Morse in Algeria.

3. On September 22, 1983, the Audit Division issued a Notice of Deficiency against petitioners proposing a net tax due¹ of \$1,676.99, plus penalty of \$419.25 and interest of \$704.06, for a total allegedly due of \$2,800.30.

4. Prior to May 7, 1978, petitioners both lived and worked in New York City and were domiciliaries of the State and City. On or about May 7, 1978, petitioners left New York City for Algiers, Algeria. Petitioners relocated to Algiers, Algeria as the result of Mr. Morse's acceptance of employment in said country with the firm Science Management & International (hereinafter "SMI"). Mr. Morse had a two-year contract with SMI and, after the expiration of said contract, he:

"...intended to either try to get another contract with Science Management either in Algeria or elsewhere in the world internationally. I was particularly interested in international work." (Transcript p. 20).

5. On or before May 7, 1978, William M. Morse and Rita T. Morse both severed employment with their respective employers, both of whom were located in New York City. Petitioners also relinquished their apartment in New York City and had all of their furniture and other personal belongings shipped to Rome, Italy, where it was placed in storage.

6. On or about May 7, 1978, petitioners left New York and flew to Rome, Italy where they stayed for a short period before proceeding to Algiers, Algeria. While living in Algiers, Algeria, petitioners resided in housing provided by SMI.

1 The recomputation of petitioners' 1978 and 1979 personal income tax liabilities as full year resident individuals produced a tax due from Mr. Morse and a refund due Mrs. Morse. The tax due shown on the Notice of Deficiency was computed allowing Mr. Morse a credit equal to the refund due Mrs. Morse.

7. Petitioners remained in Algiers, Algeria until approximately April of 1979, at which time SMI terminated Mr. Morse's contract. Petitioners returned to Rome, Italy where they stayed for approximately three to four weeks while Mr. Morse sought employment opportunities in said country. Having failed to find employment in Italy, petitioners returned to New York City on or about May 1, 1979.

8. Petitioner William M. Morse is a citizen of the United States, while petitioner Rita T. Morse is a citizen of Italy. Mrs. Morse's family owned a building in Rome, Italy which contained several apartments, one of which was given to petitioners for their exclusive use sometime in 1976 or 1977. The apartment was partially furnished and petitioners used said apartment whenever they were in Rome, Italy. No rental payments were made by petitioners for the use of the apartment.

9. Upon their return to New York City in 1979, Mr. Morse obtained employment with a firm located in New York City; however, all of his services for said firm were performed in Montreal, Canada. Mr. Morse testified that he was under the impression that no New York return was required to be filed for 1979 since all of his income was earned either in Algeria or Canada. No explanation was offered as to why the 1978 return was not timely filed and why Mrs. Morse, who earned \$4,090.00 of wage income in New York City in 1979, did not timely file a return for 1979.

CONCLUSIONS OF LAW

A. That to change one's domicile there must be an intent to make the new location a fixed and permanent home, coupled with an actual acquisition of a residence in the new locality (Klein v. State Tax Comm., 55 A.D.2d 982, aff'd., 43 N.Y.2d 812; Bodfish v. Gallman, 50 A.D.2d 457).

B. That while the evidence to establish the requisite intention to effect a change of domicile must be clear and convincing, Klein v. State Tax Comm., supra; Bodfish v. Gallman, supra, the question is not whether the taxpayer intends to leave New York forever, but whether he intends to make the new location his "permanent home...with the range of sentiment, feeling and permanent association with it." (Starer v. Gallman, 50 A.D.2d 28).

C. That if domicile is established in New York State, there is a basis for taxation therein, and presence in this state is not necessary in order for such tax to be assessed against the taxpayer. Starer v. Gallman, supra.

D. That domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests on the party who alleges a change. Bodfish v. Gallman, supra.

E. That petitioners, William M. Morse and Rita T. Morse, have failed to sustain their burden of proof imposed by section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York to show that a bona fide intention existed to abandon their New York domicile and establish a new domicile in either Rome, Italy or Algiers, Algeria in 1978. That petitioners are taxable as resident individuals of New York State and New York City for 1978 and 1979 within the meaning and intent of 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.

F. That petitioners have also failed to sustain their burden of proof to show that reasonable cause existed for their failure to timely file returns for 1978 and 1979 [Tax Law §685(a)(1) and Administrative Code §T46-185.0(a)(1)].

G. That the petition of William M. Morse and Rita T. Morse is denied and the Notice of Deficiency dated September 22, 1983 is sustained, together with such additional penalty and interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER