

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Gerald J. Sacks :  
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 :  
1979. :  
:

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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 Gerald J. Sacks, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald J. Sacks  
c/o Jack Schlossberg  
41 East 4nd Street  
New York, NY 10017

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

Samuel R. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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Gerald J. Sacks :  
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1979. :  
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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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Jack Schlossberg, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Schlossberg  
41 East 42nd Street  
New York, NY 10017

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

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

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

February 6, 1985

Gerald J. Sacks  
c/o Jack Schlossberg  
41 East 4nd Street  
New York, NY 10017

Dear Mr. Sacks:

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  
Jack Schlossberg  
41 East 42nd Street  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GERALD J. SACKS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1979.	:	

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Petitioner, Gerald J. Sacks, 1215 Boulevard, Jacksonville, Florida 32206, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1979 (File No. 36827).

A formal 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 May 8, 1984 at 9:15 A.M. Petitioner appeared by Jack Schlossberg, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was a resident individual of the State of New York during the taxable year 1979.

FINDINGS OF FACT

1. Gerald J. Sacks (hereinafter petitioner) filed a New York State Income Tax Nonresident Return for the year 1979 whereon he reported his home address as 1103 Eleven Lane, Palm Beach, Florida 33410. Said return showed no tax liability since the deductions claimed were greater than the reported New York income. On two applications for extension of time to file his Federal return for 1979 and on a Wage and Tax Statement submitted with his New York return, petitioner's address was reported as 72 West Patent Road, Bedford Hills, New

York 10509. Petitioner's filing status reported on said return was "Unmarried head of household or Qualifying widow(er) with dependent child".

2. On May 15, 1981, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that he was a resident of New York for the entire year 1979. Accordingly, his tax liability was recomputed based on the explanation that: "As a resident of New York, your excess itemized deductions and capital gain deduction are items of tax preference and subject to minimum income tax."

3. On November 19, 1981, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax (minimum income tax) of \$3,533.22, penalties of \$323.44, plus interest of \$522.95, for a total due of \$4,379.61. Said penalties were asserted pursuant to sections 685(a)(1) and 685(C) of the Tax Law for failure to timely file the 1979 return and failure to file a declaration of estimated tax, respectively.

4. Petitioner contended that he effected a bona fide change of domicile to the State of Florida several years prior to the year at issue herein. He argued that although he was domiciled in Florida during the years 1976, 1977 and 1978, he filed as a resident of New York since he spent in the aggregate more than 183 days of each of said years in New York.

5. Prior to, and during the year at issue, petitioner, a licensed veterinarian, owned a small business corporation known as Bedford Animal Hospital Inc. located in Mount Kisco, New York.

6. In 1973 petitioner began speculating in real property in Florida. As a result, he purchased an apartment in Florida in order to have a place to live during the frequent times he and his wife traveled there.

7. In 1975 petitioner decided that he wanted to reside in Florida on a permanent basis. Accordingly, he listed the Bedford Hills, New York home, owned by him and his wife, for sale with Bixler Real Estate Corporation some time prior to November 14, 1975.

8. Petitioner submitted, inter alia, the following documentation in support of his position that he was a resident of Florida during the year 1979:

a) Permanent voter registration identification card issued February 26, 1976 for Palm Beach County, Florida whereon his address was reported as 5440 North Ocean Drive, Apt. 206, Riviera Beach, Florida.

b) Subsequent Palm Beach County, Florida voter identification cards wherein his address was reported as 1103 11th Lane, Palm Beach Gardens, Florida 33410.

c) Several Florida vehicle registration certificates spanning the years 1977 through 1979 listing petitioner's address for the years prior to 1979 as 5440 North Ocean Drive, Palm Beach, Florida, and the year 1979 as 1103 11th Lane, Palm Beach Gardens, Florida.

d) Utility bills for 1979 for the 11th Lane address.

e) Certificate from First Federal Savings and Loan Association of the Palm Beaches establishing that petitioner opened a savings account with said bank on March 28, 1979.

f) Correspondence with several real estate companies establishing petitioner's intent to sell the Bedford Hills, New York house. Said correspondence was dated between November 14, 1975 and July 2, 1979.

g) Sales agreements and closing statements establishing petitioner's purchases of investment properties in Florida during 1979.

h) Florida driver's license issued February 6, 1980.

9. During 1979, petitioner maintained his New York State driver's license.

10. Petitioner closed on the house located at 1103 11th Lane in January 1979. Said house, which is a two story townhouse, has 3 bedrooms and 2½ baths.

11. At some point a few years prior to 1979, petitioner's wife, Hannah Sacks, ceased accompanying him during his stays in Florida. She continued to reside in the Bedford Hills, New York house. Due to ongoing matrimonial

problems the house was not sold until 1980, with closing taking place in January, 1981.

12. Petitioner and his wife were separated in August 1978 and divorced on July 3, 1979. Pursuant to the divorce decree, it was found that:

- a) "That for more than one year prior to the commencement of this action, and at the time of the commencement hereof, plaintiff (Hannah Sacks) and defendant (Gerald J. Sacks) were and presently are, residents of the County of Westchester, State of New York."
- b) "That for a period of more than one year prior to the commencement of this action and since 1976 the defendant told the plaintiff that he wanted to lead a single life and had absented himself from the marital premises for a period of three out of every four weeks in each month from October until the following April."
- c) "That since 1976 the defendant traveled to Florida remaining there for long periods of time which required the plaintiff to seek employment in order to defray some of the costs in the marital premises which the defendant discontinued to pay while he was in Florida."

13. Pursuant to said divorce decree it was ordered, inter alia, that:

- a) "As security for the payment of the balance of THIRTY-FIVE THOUSAND (\$35,000.) DOLLARS, the plaintiff will execute a deed to the defendant which deed shall transfer to the defendant full and exclusive title to the marital premises located at 72 West Patent Road, Bedford Hills, New York, at the same time the defendant will execute a second mortgage upon the marital premises which shall be non interest-bearing and shall be payable at the rate of ONE THOUSAND (\$1,000.) DOLLARS per month for THIRTY-FIVE (35) months. In the event that the premises are sold by the defendant, then the balance due to the plaintiff shall be payable at once to the plaintiff;"
- b) "The plaintiff shall vacate the marital premises together with her children by a prior marriage on or before July 15, 1979..."

14. Petitioner's claim of New York residency was made on the advice of his lawyer. Such claim was made solely with respect to the divorce proceeding. This was done in order to simplify matters and give the New York court jurisdiction in the proceeding.

15. Prior to and during 1979, petitioner operated his business, Bedford Animal Hospital Inc., as an absentee owner. He employed another veterinarian and other staff to take care of the day to day operations.

16. During 1979 petitioner spent 132 days in New York State. Said days were spent tending to his business and visiting friends. No days were spent at the marital premises.

17. Petitioner has five children from a previous marriage. None of the children resided with him in Florida.

18. All real property sold by petitioner in 1979 was located in Florida.

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. (20 NYCRR 102.2(d)(2)). A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home. (20 NYCRR 102.2(d)(4)).

B. That petitioner, Gerald J. Sacks was domiciled in the State of Florida during the entire taxable year 1979.

C. That section 605(a) of the Tax Law provides in pertinent part that a resident individual means an individual:

"(2) Who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than one hundred eighty-three days of the taxable year in this State..."



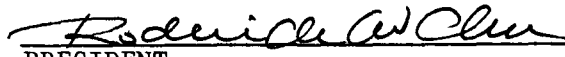
D. That petitioner, Gerald J. Sacks was not a resident individual of the State of New York during taxable year 1979, since he was a non-domiciliary of New York and did not spend, in the aggregate, more than 183 days in New York during said year.


E. That the petition of Gerald J. Sacks is granted and the Notice of Deficiency dated November 19, 1981 is hereby cancelled.

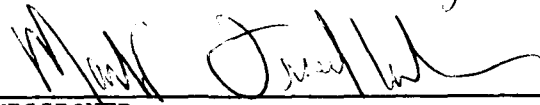
DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER