

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Caroline M. Woodruff

: AFFIDAVIT OF MAILING

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 :
Year 1980.

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Caroline M. Woodruff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Caroline M. Woodruff
HH 31 Ocean Reef Club
Key Largo, FL 33037

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
15th day of February, 1985.

David Parchuck

Bennie A. O'Connell

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Caroline M. Woodruff :

AFFIDAVIT OF MAILING

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 Year 1980.

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Dennis H. Stamm, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dennis H. Stamm
Brout & Company
1430 Broadway
New York, NY 10018

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
15th day of February, 1985.

David Parchuck

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

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

February 15, 1985

Caroline M. Woodruff
HH 31 Ocean Reef Club
Key Largo, FL 33037

Dear Ms. Woodruff:

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
Dennis H. Stamm
Brout & Company
1430 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CAROLINE M. WOODRUFF	:	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 1980.	:	

Petitioner, Caroline M. Woodruff, HH 31, Ocean Reef Club, Key Largo, Florida 33037, 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 1980 (File No. 39345).

A formal 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 October 15, 1984 at 1:15 P.M. Petitioner appeared by Brout & Company (Dennis H. Stamm, C.P.A.) The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether, for the year 1980, petitioner Caroline M. Woodruff was 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 was thus a resident individual 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. On April 14, 1981, petitioner herein, Caroline M. Woodruff, timely filed a New York State Income Tax Nonresident Return and a New York City Nonresident Earnings Tax Return for 1980. On her State return, petitioner reported total Federal income of \$79,864.00 and total New York State income of \$19,036.00. Petitioner's 1980 New York City return reported gross wages from City sources of \$18,851.00. The address shown on both the State and City returns was PC-42-B Ocean Reef, Key Largo, Florida.

2. On May 5, 1982, the Audit Division issued a Notice of Deficiency to petitioner for 1980, asserting that additional New York State and City income taxes were due in the sum of \$6,530.20, plus interest of \$824.36, for a total allegedly due of \$7,354.56. The aforementioned Notice of Deficiency was premised on a Statement of Audit Changes dated February 2, 1982, wherein the Audit Division offered the following explanation:

"A person can have only one domicile. A domicile once established continues until the person in question moves to a new location with the bona fide intention of making her fixed and permanent home there.

Information submitted does not indicate that you intended to abandon your New York domicile and establish a permanent domicile elsewhere.

Therefore you are considered a New York resident the entire year and all income is taxable to New York."

3. It is petitioner's position that in mid-December, 1979, she changed her domicile from 300 East 56th Street, New York, New York, to PC-42-B Ocean Reef, Key Largo, Florida. Petitioner registered to vote in Florida on April 22, 1980 and she had also obtained a Florida driver's license sometime prior to the year at issue.

4. Petitioner did not appear at the hearing to offer her testimony.

However, in response to specific inquiries from the Audit Division, petitioner stated, in a letter dated July 30, 1981, that:

"I did not relinquish my apartment in New York as I use it from time to time when I am in New York... I still rent at 300 East 56th Street - my family and I use it occasionally."

5. Pursuant to a letter dated April 15, 1982, petitioner's representative advised the Audit Division that:

"Ms. Woodruff's former residence was sublet in December, 1979. The taxpayer still holds the lease and is currently trying to sublet the apartment which is now vacant."

6. Submitted in evidence at the hearing held herein was an unsworn letter dated September 24, 1984, from Charles E. Woodruff, petitioner's father, which indicated that:

"This is to confirm and certify that in December 1979, my wife and I took over the 300 East 56th Street apartment, which up to that time was my daughter's residence. Since that date, we have paid all expenses."

Mr. Charles E. Woodruff did not appear at the hearing to testify on petitioner's behalf.

7. To support the assertion that petitioner's parents were in fact making the rental payments on the New York City apartment, petitioner submitted in evidence three cancelled checks drawn on the joint checking account of Caroline Woodruff (petitioner's mother) and Charles E. Woodruff (petitioner's father). All three checks were made payable to Glenwood Management Corporation, the landlord for the New York City apartment, and said checks were signed by Caroline Woodruff, petitioner's mother. The earliest of the three checks submitted in evidence was dated April 9, 1981 and the address shown on said check was the same address as shown on petitioner's 1980 New York State and City tax returns (PC-42-B Ocean Reef Club, Key Largo, Florida). The two

remaining checks were dated January 4, 1983 and March 26, 1983 and the address shown on both of said checks was HH28 Ocean Reef Club, Key Largo, Florida.

Petitioner's representative asserted that Caroline Woodruff, petitioner's mother, signed the aforementioned checks for the New York City apartment as:

"...a planned confusion by the parents for purposes of the landlord. So that the Caroline Woodruff signing the checks is the mother, but the address on the top is the daughter's so that the landlord would assume that the checks were coming from Florida, where the daughter lived and was signed by the daughter, which in fact, was not the case."

No rental checks were submitted for the New York City apartment for the year at issue (1980).

8. Also submitted in evidence were two checks written by petitioner herein, Caroline M. Woodruff, drawn on a checking account maintained at Manufacturers Hanover Trust Company, 4 New York Plaza, New York, New York. Check #201 was dated June 2, 1980 and was made payable to a clinical lab located in Florida. Check #394 was dated January 7, 1980 and was made payable to Ocean Reef Properties. In the lower left hand portion of check #394, petitioner made the following notation, "Deposit for HH-31". The back of check #394 contained several stamps from various banks and all of said stamps indicated that check #394 was processed in mid-January, 1981.

9. Petitioner alleges that she moved into apartment PC-42-B Ocean Reef, Key Largo, Florida in December, 1979. Sometime thereafter petitioner's address of record changed to apartment HH-31 Ocean Reef Club, Key Largo, Florida. No lease agreements were submitted in evidence and, other than check #394, supra, no evidence was submitted substantiating that petitioner made any rental payments in 1980 for apartment PC-42-B Ocean Reef or apartment HH-31 Ocean Reef Club.

10. Petitioner submitted in evidence a photostatic copy of a Declaration of Domicile and Citizenship filed with the Clerk of the Circuit Court, Monroe County, Florida. Said document indicated that petitioner changed her domicile to and became a bona fide resident of the State of Florida as of December 13, 1979. The Declaration of Domicile and Citizenship was executed by petitioner on January 3, 1984.

11. Also submitted in evidence was a copy of a Receipt for 1981 Tax Exemption Renewal. Said document was issued by the property appraiser of Monroe County, Key West, Florida and indicated that a \$5,000.00 Homestead Exemption had been granted to Caroline Woodruff.¹ The eligibility requirements for the \$5,000.00 Homestead Exemption, as shown on the document submitted in evidence, were as follows:

"On January 1 of this year you must have owned and occupied the property described on the renewal card as your permanent legal residence."

12. In 1975, petitioner executed a will in New York State naming Manufacturers Hanover Trust Company as her executor. Pursuant to a letter dated September 8, 1981, Manufacturers Hanover Trust Company advised petitioner as follows:

"We have marked our records to reflect your change of address to Florida. Unfortunately, our Bank will not be able to qualify as executor or trustee under your Will in the state of Florida."

The record does not disclose the date that petitioner advised said bank of her change of address to Florida.

1 The record herein does not clearly disclose whether the exemption was granted to petitioner's mother, Caroline Woodruff, or to petitioner, Caroline M. Woodruff.

13. During the year at issue, petitioner was employed as a stockbroker by R. Lewis Securities, Inc., 60 Broad Street, New York, New York. The address shown on the wage and tax statement issued to petitioner by R. Lewis Securities, Inc. was 300 East 56th Street, New York, New York. Petitioner spent a total of 131 days in New York State and City during 1980, of which 73 were working days. While in New York City, petitioner stayed at the 300 East 56th Street apartment.

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, §689(e); Title T, §T46-189.0(e); 20 NYCRR 102.2(d)(2)]. "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).

C. That petitioner has failed to sustain her burden of proof to show that she changed her domicile from New York State and City to Florida in December, 1979. The evidence submitted by petitioner was fragmented and unconvincing. Initially, it must be noted that petitioner did not appear at the hearing to offer her testimony. The record herein contains three separate versions as to the disposition of petitioner's New York City apartment. During the year at issue, petitioner spent 131 days in New York State and City and, while in New

York, petitioner resided at the 300 East 56th Street apartment. Petitioner also maintained a bank account in New York. No lease agreements were submitted in evidence for either the New York City apartment or the apartment located in Florida. Petitioner did not submit any checks substantiating that rental payments were made during 1980 in Florida.² The Declaration of Domicile and Citizenship was executed by petitioner some four years after her purported change of domicile to Florida and the Homestead Exemption, even if issued to petitioner herein, was for the year 1981 and not the year at issue.


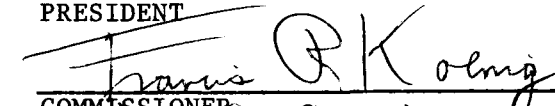
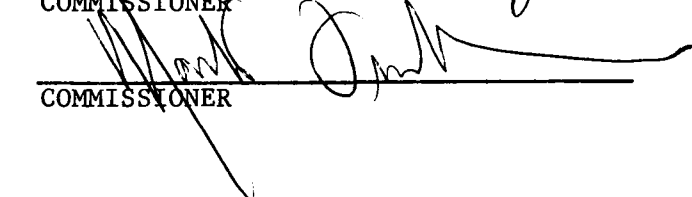
On this record, it cannot be found that petitioner intended to relinquish her domicile in New York State and City and establish a new domicile in Florida. Since petitioner was domiciled in New York State and City for the year 1980 and spent more than 30 days in New York State and City during said year, she is taxable as a resident individual pursuant to 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.

D. That the petition of Caroline M. Woodruff is denied and the Notice of Deficiency dated May 5, 1982 is sustained, together with such additional interest as may be due.

DATED: Albany, New York

FEB 15 1985

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER

2 Check #394, made payable to Ocean Reef Properties as a "Deposit on HH-31", although dated January 7, 1980, was not processed until mid-January, 1981. Since check #201 was dated June 2, 1980, it is apparent that check #394 could not have been dated January 7, 1980 and that said check was actually prepared on January 7, 1981.