

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Jack (dec'd) & Rose Peerless :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax
under Article(s) 22 of the Tax Law :
for the Years 1980 & 1981.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of March, 1986, he/she served the within notice of decision by certified mail upon Jack (dec'd) & Rose Peerless the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack (dec'd) & Rose Peerless
1209 East Broadway
Hewlett, NY

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
27th day of March, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of
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of a Determination or Refund of Personal Income Tax
under Article(s) 22 of the Tax Law :
for the Years 1980 & 1981.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of March, 1986, he/she served the within notice of decision by certified mail upon Herbert Granoff, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

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
27th day of March, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 27, 1986

Jack (dec'd) & Rose Peerless
1209 East Broadway
Hewlett, NY

Dear & Mrs. Peerless:

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: Taxing Bureau's Representative

Petitioner's Representative:
Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK PEERLESS (DECEASED) and ROSE PEERLESS	:	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 Years 1980 and 1981.	:	

Petitioners, Jack Peerless (deceased) and Rose Peerless, 1200 East 56th Street, Brooklyn, New York 11234, 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 1980 and 1981 (File No. 46515).

A 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 October 24, 1985 at 11:15 A.M. Petitioners appeared by Herbert Granoff, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether, during the years 1980 and 1981, petitioners were domiciled in the State and City of New York and either maintained a permanent place of abode in New York State and City, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York State and City and were thus New York State and City resident individuals under 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.

FINDINGS OF FACT

1. Petitioners, Jack Peerless (deceased) and Rose Peerless, filed joint New York State income tax nonresident returns for each of the years 1980 and 1981 whereon Jack Peerless (hereinafter "the decedent") reported his occupation as "retired." The address reported on each return was that of their New York tax preparer. Attached to the 1980 return were three (3) Federal schedules C whereon the decedent reported income and deductions from three (3) sole proprietorships, each of which reported its business address as "Irving Cohen, 502 Park Avenue, NYC, NY 10022." On said return, the decedent reported partnership income of \$29,069.00 derived from several New York partnerships. The envelope within which their 1980 return was submitted bore the return address "J. Peerless, 1200 E. 56th St., Brooklyn, N.Y. 11234." Said address was that of petitioners' two-family home, one-half of which was rented during the years at issue herein. On petitioners' 1981 return, they reported income identical in nature to that as detailed above.

2. On February 23, 1983, the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be New York State and City residents for 1980 and 1981 since they "maintained a residence in New York City, at 1200 East 56th Street, during each of the tax years." Accordingly, a Notice of Deficiency was issued against petitioners on July 21, 1983 asserting New York State and City personal income tax of \$14,429.40, plus interest of \$3,526.29, for a total due of \$17,955.69.

3. Petitioners alleged in their petition that they were domiciliaries and residents of the State of Florida and had been such since 1978. In 1971, they

purchased an apartment in Florida located at 231 East 174th Street, North Miami Beach. It was alleged that they moved into said apartment in 1973.

4. To substantiate their claim that they were domiciliaries and residents of Florida during 1980 and 1981, petitioners submitted the following:

a. Bills from the Florida Power and Light Company for kilowatt hours used at the aforesated Florida address during 1980 and 1981. One check to said company was also submitted. Said check, dated August 10, 1980, bore petitioners' Brooklyn, New York address and was drawn on Manufacturers Hanover Trust Company, 20 Flatbush Avenue, Brooklyn, New York 11217.

b. A receipt evidencing the decedent's filing of a Florida Declaration of Domicile and payment of a voting fee on December 22, 1978.

c. Documentation evidencing that the decedent registered to vote in Dade County, Florida on December 22, 1978 and that Mrs. Peerless registered to vote in Dade County, Florida on February 22, 1979.

d. Documentation evidencing that the decedent applied for a Homestead Exemption with the Dade County Property Appraiser on February 22, 1979 and that such exemption was granted on January 10, 1980.

e. Documentation evidencing that the decedent's automobile insurance was handled by State Farm Mutual Automobile Insurance Company's Florida office during 1980.

f. Documentation evidencing that petitioners paid Florida real property taxes during 1980 and 1981.

g. The death certificate of the decedent indicating that he was deceased on June 30, 1982. Said certificate also indicated that his "usual residence" was 1200 East 56th Street, Brooklyn, New York and that he was buried at Wellwood Cemetery in Farmingdale, New York.

h. Several real estate agreements entered into between May 15, 1978 and October 14, 1981 for sale of their Brooklyn, New York residence, with all furniture, carpets and fixtures.

i. Documentation evidencing that the decedent's son, Philip Peerless, had been appointed administrator of the estate of the decedent. The Petition for Administration was filed in the Circuit Court for Dade County, Florida.

j. The decedent's Last Will and Testament executed on April 6, 1982, wherein his address was listed as 231-174th Street, Miami Beach, Florida.

k. Documentation evidencing that the Last Will and Testament was probated in Florida.

1. Documentation evidencing that the decedent filed a Florida Intangible Personal Property Tax Return for 1981.

5. Petitioners had been making frequent trips to Florida for approximately 25 years prior to the years at issue.

6. During each of the years at issue, petitioners went to Florida from approximately mid-September to approximately mid-April. The balance of each year was spent in New York, either at their Brooklyn residence or a cottage which they rented in the Catskill Mountains.

7. The Brooklyn, New York house was sold in 1984.

8. Petitioner Rose Peerless is currently residing in Brooklyn, New York.

CONCLUSIONS OF LAW

A. 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 (20 NYCRR 102.2[d][2]). To change one's domicile requires an intent to give up the old and take up the new (Matter of Newcomb,

192 N.Y. 238)... The evidence to establish the required intention to effect a change of domicile must be clear and convincing (Ruderman v. Ruderman, 193 Misc. 85; Matter of Bodfish v. Gallman, 50 A.D.2d 457).

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to 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 they had changed their domicile from New York to Florida prior to or during the years at issue herein. Accordingly, it must be held that petitioners were domiciled in New York during the years 1980 and 1981.

C. 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..."

D. That for New York City purposes, section T46-105.0(a)(1) of the Administrative Code of the City of New York provides a substantially similar definition for a City resident individual as that provided for a New York State resident individual under section 605(a)(1) of the Tax Law.

E. That since petitioners maintained a permanent place of abode in New York State and City during each of the years 1980 and 1981 and spent in the aggregate more than thirty days of 1980 and 1981 in New York State and City, they were resident individuals of New York State and City during each of the years 1980 and 1981.

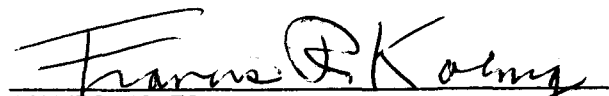
F. That the petition of Jack Peerless (deceased) and Rose Peerless is denied and the Notice of Deficiency dated July 21, 1983 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals Bureau

8 15

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 5/8/86
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec 4/27/86
Name Jack (dec'd) & Rose Peerless	
Address 1209 East Broadway Newlett, N.Y.	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DP	Section	Date of Search 5/8/86
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

W. A. Harriman Campus

ALBANY, N.Y. 12224

CLAIM CHECK
NO.

DATE

1ST NOTICE

2ND NOTICE

RETURN

4-12-8
Detached from
PS Form 3849-
Oct. 1980

Fold at line over top of envelope to the right
of the return address.

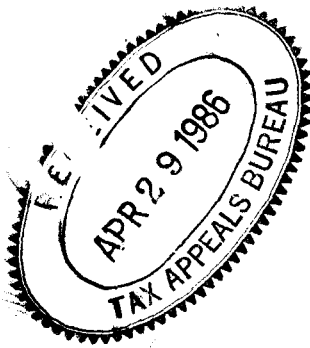
CERTIFIED

P 319 373 592

MAIL

Jack (dec'd) & Rose Peerless
1209 East Broadway
Hewlett, N.Y.

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



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

March 27, 1986

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1209 East Broadway
Hewlett, NY

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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

Petitioner's Representative:
Herbert Granoff
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Great Neck, NY 11020

STATE TAX COMMISSION

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DECISION

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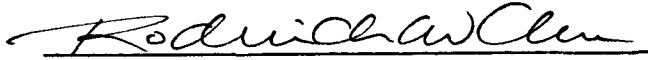
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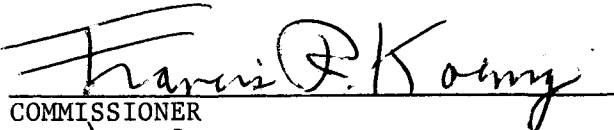
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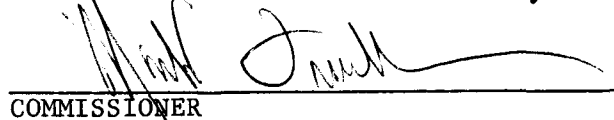
DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986


PRESIDENT


COMMISSIONER


COMMISSIONER