

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Ronald A. & Lu M. Shirley : 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 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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Ronald A. & Lu M. Shirley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald A. & Lu M. Shirley
539 Ajo Court IH
Granbury, TX 76048

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 January, 1986.

David Parchuck

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

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

January 3, 1986

Ronald A. & Lu M. Shirley
539 Ajo Court IH
Granbury, TX 76048

Dear Mr. & Mrs. Shirley:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RONALD A. SHIRLEY and LU M. SHIRLEY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

Petitioners, Ronald A. Shirley and Lu M. Shirley, 539 Ajo Court IH, Granbury, Texas 76048, 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 1980 (File No. 52183).

On June 30, 1985, petitioners filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record, with additional information to be submitted by August 30, 1985. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioners were residents of New York State and subject to New York personal income tax in the year 1980.

FINDINGS OF FACT

1. Petitioners, Ronald A. Shirley and Lu M. Shirley, filed a Federal personal income tax return for the taxable year 1980. On that return they reported their address as 35 Patchogue Road, Sound Beach, New York. Petitioners did not file a New York return for 1980. Based on the address shown on the Federal return, the Audit Division sent petitioners a questionnaire inquiring

whether a New York State return had been filed and, if not, why such a return was not filed. Petitioners did not respond to the questionnaire.

2. On March 26, 1984, as a result of petitioners' failure to respond to the questionnaire and based on the information reported on the Federal return, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$1,902.64, plus penalty of \$770.57 and interest of \$673.95, for a total due of \$3,347.16 for the year 1980.

3. Petitioners moved to Texas on an unspecified date in 1979 and resided in a trailer park or apartment (the record is unclear as to which type of residence petitioners inhabited) through 1980. Mr. Shirley was employed by Newtron, Inc. at the Corpus Christi Petrochemical Company in Corpus Christi, Texas from November 1, 1979 through July 25, 1980. He was unemployed until October 27, 1980 when he went to work for the Goldston Company, Inc. in Corpus Christi. He remained there until December 19, 1980 when he was laid off.

4. Petitioners at some point moved to Granbury, Texas where they currently reside. No information as to petitioners' employment history subsequent to December 19, 1980 was supplied. Furthermore, petitioners never explained why a Federal return was filed in 1980 listing a home address in Sound Beach, New York.

5. Petitioners further maintained that they could not accede to a tax imposed by New York State requiring payment in any tender other than silver or gold coin since they believe this would violate Article I, Section 10, of the United States Constitution.

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 the petitioner to show that the necessary intention to effect a change in domicile existed. Tax Law §689(e); 20 NYCRR 102.2(d)(2).

"The determination of an individual's domicile is ordinarily based on conduct manifesting an intent to establish a permanent home with permanent associations in a given location (citation omitted). An individual's original or selected domicile continues until there is a clear manifestation of an intent to acquire a new one (citation omitted)." Clute v. Chu, 106 A.D.2d 841.

C. That evidence of a move to Texas coupled with employment at two jobs lasting eight months and two months, respectively, is simply not sufficient proof of petitioners' clear intent to change their domicile from New York to Texas. Petitioners provided no information with respect to their New York address, specifically, why they reported this address on their 1980 Federal return and whether they continued to maintain the New York residence following their move to Texas. Additionally, no evidence was provided with respect to whether petitioners returned to New York State periodically following their move. Furthermore, no evidence of any other indicia of an intent to change domicile was provided, for example, driver's licenses, voting registrations and changing of wills. In view of the limited evidence offered by petitioners, they have failed to meet their burden of proof with respect to a change in domicile for the year 1980.

D. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission.


E. That the petition of Ronald A. Shirley and Lu M. Shirley is denied and the Notice of Deficiency issued March 26, 1984 is sustained.

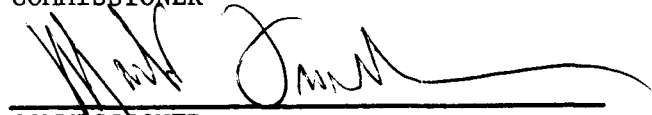
DATED: Albany, New York

STATE TAX COMMISSION

JAN 03 1986


PRESIDENT


COMMISSIONER


COMMISSIONER