

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Earl L. Wills :

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 :
Year 1980.
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Earl L. Wills the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Earl L. Wills
1950 U.S. 19N, Lot 203
Clearwater, FL 33575

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 July, 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

July 3, 1986

Earl L. Wills
1950 U.S. 19N, Lot 203
Clearwater, FL 33575

Dear Mr. Wills:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

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
EARL L. WILLS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1980.

DECISION

Petitioner, Earl L. Wills, 1950 U.S. 19N, Lot 203, Clearwater, Florida 33575, 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. 56826).

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 March 5, 1986 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner incurred a change of domicile from New York to Kansas effective March 23, 1980 and was thus taxable as a part-year resident individual.

FINDINGS OF FACT

1. Petitioner, Earl L. Wills, and his spouse, Beverly J. Wills, timely filed separate New York State income tax resident returns for 1980. On his return petitioner computed total New York income of \$6,473.60 in the following manner:

Wages	\$24,464.80
Moving expenses subject to Kansas tax	200.00
Total	\$24,664.80
Adjustments (Kansas income)	18,191.20
Total New York income	<u>\$ 6,473.60</u>

Attached to petitioner's return were two wage and tax statements issued by the United States Department of the Treasury which indicated that Mr. Wills received wages of \$6,473.60 while employed in New York and wages of \$17,991.20 while employed in Kansas.

2. On October 29, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1980 wherein total New York income was increased to \$24,665.00 since "A New York State resident is taxable on income received from all sources both within and without New York State." The Audit Division considered petitioner to be taxable as a full year resident individual and therefore disallowed his claimed \$18,191.20 adjustment to income.

3. Based on the aforementioned statement, the Audit Division, on April 12, 1984, issued a Notice of Deficiency to petitioner for 1980 asserting additional tax due of \$1,191.01, plus interest of \$426.30, for a total allegedly due of \$1,617.31. At the hearing held herein, the Audit Division conceded that petitioner was entitled to a resident tax credit of \$453.12 for taxes paid to the State of Kansas and that the tax asserted due in the Notice of Deficiency should therefore be reduced to \$737.89 (\$1,191.01 less \$453.12).

4. During the entire year 1980, and for some 30 years prior thereto, petitioner was employed as a collection agent for the Internal Revenue Service. Petitioner has lived and worked in New York State on a continuous basis since approximately 1960. Mr. and Mrs. Wills and their son have resided in Henrietta, New York since 1975. Petitioner worked out of the Rochester, New York office of the Internal Revenue Service until March 22, 1980.

5. Effective close of business March 22, 1980, petitioner transferred from the Internal Revenue Service's Rochester, New York office to its office in Wichita, Kansas. Petitioner, for personal reasons, voluntarily sought this

transfer, which was permanent in nature. Mr. Wills' spouse and 13 year old son did not accompany him to Wichita, Kansas, instead electing to retain their residence in Henrietta, New York.

6. Effective April 1, 1980, petitioner entered into a one-year lease for the rental of an apartment located in Wichita, Kansas. Petitioner continuously resided in said apartment from April 1, 1980 until approximately October 31, 1982. Mr. Wills also opened a checking account with the Fourth National Bank & Trust Co. of Wichita, Kansas and a joint checking account maintained by Mr. and Mrs. Wills in New York was closed out. Mrs. Wills subsequently established a new checking account in her own name.

7. While living and working in Wichita, Kansas, petitioner would send checks to his spouse in New York for her support and for the support of his son. Petitioner would occasionally return to New York to visit his spouse and son and they would occasionally travel to Kansas.

8. Petitioner filed a Kansas Individual Income Tax Return for 1980 indicating that he became a resident of Kansas on March 23, 1980. Total income taxes paid to the State of Kansas for 1980 amounted to \$453.12.

9. On or about October 25, 1982, petitioner retired from the Internal Revenue Service due to illness. For the months of November and December, 1982, petitioner visited with friends and relatives, including his spouse and son in New York. On January 2, 1983, petitioner moved to Florida where he purchased a mobile home in Clearwater, however, his spouse and son remained in New York and did not move with him to Florida. Sometime in 1985, petitioner's son entered the United States Naval Academy and soon thereafter the house in Henrietta, New York, which was jointly owned by Mr. and Wills, was sold. After the sale of the house, Mrs. Wills joined her husband in Florida.

CONCLUSIONS OF LAW

A. That section 605(a) of the Tax Law, in pertinent part, provides:

"(a) Resident individual. A resident individual means an individual:

(1) who is domiciled in this state, unless (A) 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..."

B. That "...to effect a change of domicile, there must be an actual change of residence, coupled with an intention to abandon the former domicile and to acquire another." Aetna Nat'l. Bank v. Kramer, 142 A.D. 444 (1st Dep't., 1911).

C. That "[t]he 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' (Matter of Bourne, 181 Misc. 238, 246, aff'd. 267 App. Div. 876, aff'd. 293 N.Y. 785)." Matter of Bodfish v. Gallman, 50 A.D.2d 457.

D. That Regulations of the State Tax Commission provide:

"A domicile once established continues until the person in question moves to a new location with the intention of making his fixed and permanent home there. No change of domicile results from the removal to a new location if the intention is to remain only for a limited time..." [20 NYCRR 102.2(d)(2)].

E. That petitioner did effect a change of domicile from New York to Kansas effective March 23, 1980. Although petitioner maintained some contacts with New York after his move to Kansas, he evidenced a clear intention to leave New York in 1980 and to move to Kansas. Petitioner's move to Kansas was a permanent commitment, rather than a move for a specified period or purpose, and his work and residence in Kansas was ended only by his illness. Furthermore, after he left Kansas, petitioner did not return to New York to live but instead purchased a residence in Florida.

F. That petitioner was not domiciled in or taxable as a resident of New York State after March 22, 1980. Accordingly, petitioner's 1980 New York State personal income tax liability is to be recomputed on the basis that he was a resident of the State for the period January 1, 1980 to March 22, 1980 and a nonresident of New York for the remainder of the year [see Tax Law § 654 and 20 NYCRR 148.1 et. seq.].

G. That since petitioner had no income from New York State sources during the period of his nonresidence, he was not required to file a nonresident return for said period [see 20 NYCRR 148.1(b)].


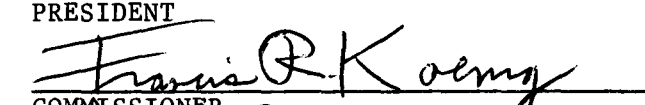

H. That total New York income reported on petitioner's return (\$6,473.60) properly reflects the income earned by petitioner during the period of his New York State residency (January 1, 1980 through March 22, 1980). However, in the computation of New York taxable income, petitioner must apportion to the resident period New York itemized deductions (\$4,973.60) and the allowance for personal exemptions (\$1,500.00). In the instant matter, it is appropriate to apportion New York itemized deductions and personal exemptions based on a percentage determined by placing the number of months in the resident period (3) over the total number of months in the taxable period (12).

I. That the petition of Earl L. Wills is granted to the extent indicated in Conclusions of Law "F", "G" and "H", supra; that the Audit Division is directed to recompute petitioner's 1980 liability consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986


PRESIDENT

COMMISSIONER

COMMISSIONER