

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harriet Michel

:

:

AFFIDAVIT OF MAILING

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 1978.

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 12th day of August, 1987, he/she served the within notice of decision by certified mail upon Harriet Michel the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

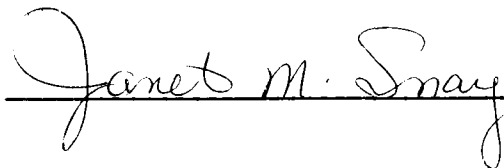
Harriet Michel
616 West 147th Street
New York, NY 10031

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
12th day of August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harriet Michel

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
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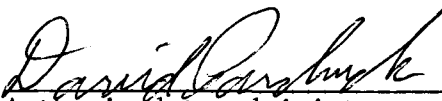
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of August, 1987, he served the within notice of decision by certified mail upon Robert Ganer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

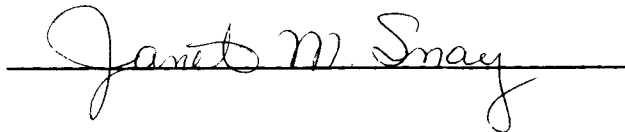
Robert Ganer
Ganer & Ganer
1995 Broadway
New York, NY 10023

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
12th day of August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

August 12, 1987

Harriet Michel
616 West 147th Street
New York, NY 10031

Dear Ms. Michel:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Robert Ganer
Ganer & Ganer
1995 Broadway
New York, NY 10023

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARRIET MICHEL : 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 1978.

Petitioner, Harriet Michel, 616 West 147th Street, New York, New York 10031, 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 1978 (File No. 61932).

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 January 13, 1987 at 10:45 A.M. Petitioner appeared by Robert Ganer, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner was a domiciliary of New York State and New York City who either maintained a permanent place of abode in New York, spent more than 30 days in New York or did not maintain a permanent place of abode outside the State and City, and was thus taxable as a full-year resident individual.

FINDINGS OF FACT

1. Petitioner herein, Harriet Michel, together with her husband, Yves Michel, filed a New York State and City of New York resident income tax return

for 1978 wherein they indicated a filing status of "Married filing separately on one Return". Petitioner reported total New York income of \$2,824.00, while her husband reported total New York income of \$6,414.00.

2. On October 29, 1982, the Audit Division issued a Statement of Audit Changes to Yves Michel for 1978 increasing his reported total New York income by, inter alia, the sum of \$41,617.00. Said amount represents income which was reported on Mr. and Mrs. Michel's 1978 joint Federal income tax return which was not included on either of their separate New York returns. The excluded income represents wages earned by petitioner Harriet Michel which the Audit Division mistakenly added to her husband's income in the computation of additional tax due.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 5, 1985, issued a Notice of Deficiency to Yves and Harriet Michel for 1978. Said notice asserted additional tax due of \$3,627.39, plus interest of \$2,535.98, for a total allegedly due of \$6,163.37.

4. In October of 1977, petitioner, Harriet Michel, began employment with the United States Department of Labor in Washington, D.C. as a political appointee of then President Carter. Prior to moving to Washington, D.C., petitioner resigned from her full-time employment as executive director of the New York Foundation located in the City of New York. Petitioner also resigned from the Board of Directors of both The City University of New York and the National Scholarship Service and Fund for Negro Students.

5. In October 1977, petitioner leased an apartment at 800 4th Street, S.W., Apt. N-43, Washington, D.C. At first petitioner's husband and two children remained living in New York City; however, in January of 1978 the children joined Mrs. Michel in Washington, D.C. On March 24, 1978, petitioner

and her husband purchased a residence as tenants by the entirety at 509-15th Street, S.E., Washington, D.C.

6. Once in Washington, petitioner opened a checking account with a local financial institution; registered to vote with the District of Columbia Board of Elections and Ethics; obtained a driver's license from the District of Columbia Department of Transportation; purchased an automobile from a dealership in Pennsylvania and also registered it with the District of Columbia Department of Transportation and, finally, filed a resident income tax return for 1978 with the District of Columbia Department of Finance and Revenue.

7. Petitioner's tenure at the Department of Labor expired in July of 1979 and, rather than returning to New York City, she took employment with the House Banking Committee and, subsequently, with the Department of Housing and Urban Development as a consultant. Mrs. Michel and her children ultimately returned to their home in New York City sometime in 1983.

8. At the time that petitioner took the position with the Department of Labor in Washington, D.C. she intended and considered her move as a permanent relocation. Mr. Michel remained in New York throughout his wife's entire stay in Washington because he was self employed and his business did not lend itself to relocation. When petitioner first moved to Washington she would return to New York City to visit her family on weekends; however, starting in January of 1978, when her children joined her in Washington, it was Mr. Michel who would commute to Washington on weekends.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore,

in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. 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".

C. 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 App Div 444, 446 [1st Dept 1911].)

D. That "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' (Matter of Bourne, 181 Misc 238, 246, affd 267 App Div 876, affd 293 NY 785)." (Matter of Bodfish v. Gallman, 50 AD2d 457.)

E. 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 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" (20 NYCRR 102.2[d][2]).


F. That petitioner has sustained her burden of proof to show that she changed her domicile from New York to Washington, D.C. sometime prior to the year at issue. Accordingly, petitioner is taxable as a nonresident of the State and City of New York for the 1978 tax year.

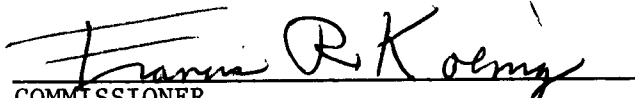
G. That the petition of Harriet Michel is granted and the Notice of Deficiency dated April 5, 1985 is hereby cancelled in its entirety.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 12 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER