

STATE OF NEW YORK

STATE **TAX** COMMISSION

In the Matter of the Petition

of

WILLIAM E. SULTAN and KATHLEEN SULTAN

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year **1975**.

Petitioners, William E. Sultan and Kathleen Sultan, Sultan Lane, Schodack Landing, New York **12156**, 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 **1975** (File No. **61010**).

A hearing **was** held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W. A. Harriman State Office Building Campus, Albany, New York on February 27, **1987** at **10:00** A.M. Petitioner, William **E.** Sultan, appeared pro se. The Audit Division appeared by John **P.** Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether, during the year **1975**, petitioner William **E.** Sultan was domiciled in New York State and either maintained **a** permanent place of abode in New York State, maintained no permanent place of abode elsewhere, or spent in the **aggregate more than 30 days in New York State, and was thus a resident individual under Tax Law § 605(a)(1).**

FINDINGS OF FACT

1. Petitioners, William **E.** Sultan and Kathleen **H.** Sultan, filed a U.S. Individual Income Tax Return for **1975** wherein they selected a filing status **of** married filing **joint return**

2. Petitioners did not file a New York State income tax return for the year 1975.

3. On February 26, 1985, the Audit Division issued a Notice of Deficiency to petitioners, asserting a deficiency of personal income tax in the amount of \$4,728.62, plus penalty of \$2,439.56 and interest of \$4,616.44, for a balance due of \$11,784.62. The Statement of Audit Changes, which was issued November 9, 1984, explained that there was **no** record of petitioners' having filed a New York State income tax return for the year 1975. Therefore, tax liability was computed on the basis of the available Federal information. The statement also explained that the penalties were asserted pursuant to Tax Law § 685(a)(1) for failure to file a tax return on or before the prescribed date, Tax Law § 685(a)(2) for failure to pay the amount shown as tax on a return required to be filed and Tax Law § 685(c) for underpayment of estimated tax.

4. Mr. Sultan was born and raised in New York.

5. Prior to the year in issue, Mr. Sultan resided with his wife in Schodack Landing, New York and worked as a truck driver.

6. In or about June or July 1975, Mr. Sultan was divorced.

7. During the year in issue, Mr. Sultan's employment **as** a truck driver resulted in his spending most of his time outside of New York. Mr. Sultan would either sleep in his truck or in a motel. He would eat at restaurants.

8. After his divorce, Mr. Sultan, for purposes of convenience, continued to receive mail at his former wife's home. He would also receive mail at the office of a trucking company in Montana.

9. During those periods of time when Mr. Sultan returned to New York, he would stay at his former wife's house.

10. At the hearing, Mr. Sultan requested that Mrs. Sultan be relieved of any liability for the tax asserted to be due.

CONCLUSIONS OF LAW

A. That during the year in issue, Tax Law § 605(a)(1) defined a resident individual as an individual

"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."

B. That since ~~Mr~~ Sultan was domiciled in New York and did not maintain a permanent place of abode elsewhere, he was subject to tax as a resident of New York (Tax Law § 605[a][11]).


C. That since petitioners filed a joint Federal return, they were required to file a joint New York income tax return unless they elected to file separate New York income tax returns on a single form (Tax Law § 651[b1[2]]). Since no election was made to file separate New York tax returns, petitioners' liability is joint and several and there is no basis to cancel the asserted deficiency with respect to Kathleen Sultan.

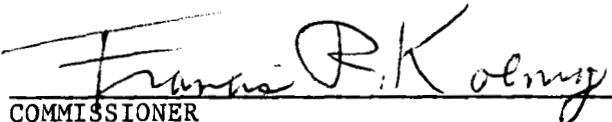
D. That the petition of William E. Sultan and Kathleen Sultan is denied and the Notice of Deficiency, dated February 26, 1985, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER