

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH A. & MARYLYN C. CRICCHIO

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year (x) 1970. :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

State of New York  
County of Albany

MARY GROFF , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of January , 1976 , she served the within  
Notice of Decision ~~(for Redetermination)~~ by ~~(certified)~~ mail upon JOSEPH A. &  
MARYLYN C. CRICCHIO ~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. Joseph A. Cricchio  
Pleasantdale Road  
Rutland, Massachusetts 01543  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~of~~ 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

14th day of January , 1976.

*Janet Maer*

*Mary Groff*

STATE OF NEW YORK  
Department of Taxation and Finance  
STATE CAMPUS  
ALBANY, N. Y. 12227

**CERTIFIED**

No. 402873

**MAIL**



REASON CHECKED  
☐ Unclaimed  
☒ Unknown  
☐ Insufficient address  
☐ Moved, Left no address  
☐ No such post office in state  
☐ Remains in this envelope

NAME Mr. & Mrs. Joseph A. Cricchio  
 1st Notice 12-23-73  
 2nd Notice 1-7-74  
 Return 1-7-74

Mr. & Mrs. Joseph A. Cricchio  
 42 Thoreau Road  
 Northboro, Massachusetts 01532



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH A. and MARYLYN C. CRICCHIO

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(x)~~ 22 of the  
Tax Law for the Year ~~(x)~~ 1970

State of New York  
County of Albany

JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 18th day of December, 1975, she served the within  
Notice of Decision (~~on Determination~~) by (certified) mail upon Joseph A. and  
Marylyn C. Cricchio (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Joseph A. Cricchio  
42 Thoreau Road  
Northboro, Massachusetts 01532  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~xx~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (~~representative of~~) petitioner.

Sworn to before me this

18th day of December, 1975.

Mary L. Goff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER  
(518) ~~518-3850~~  
**457-3850**

**DATED:** Albany, New York  
**December 18, 1973**

**Mr. & Mrs. Joseph A. Cricchio**  
**42 Thoreau Road**  
**Northboro, Massachusetts 01532**

**Dear Mr. & Mrs. Cricchio:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section ~~(s)~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**L. Robert Leisner**  
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Law Bureau

AD-1.12 (8/73)

## STATE TAX COMMISSION

The case was submitted for decision on information contained in the file.

The first issue is whether petitioners, Joseph A. and Marylyn C. Cricchio, meet the requirements under Article 22 of the Tax Law to qualify for nonresident status.

The second issue is whether petitioners, Joseph A. and Marylyn C. Cricchio, are entitled to claim a tax credit for taxes paid to the State of Georgia during the year in question.

FINDINGS OF FACT

1. Petitioners, Joseph A. and Marylyn C. Cricchio, timely filed a New York State combined income tax return for the year 1970.
2. A Notice of Determination of Deficiency in personal income tax for the year 1970 was issued on November 26, 1973, against the taxpayers under File No. 0-69201563.
3. The taxpayers petitioned for determination of the deficiency.
4. Petitioners were domiciliaries of New York State during the year in question.
5. Petitioner, Joseph A. Cricchio was a member of the United States Armed Services living in Columbia, Georgia, during approximately ten months of the year in question. On November 6, 1970, petitioners changed their place of residence from Columbia, Georgia, to Flushing, New York. They remained in their Flushing residence for the balance of the year 1970.
6. While petitioners resided in Georgia, during the year in question, petitioner, Marylyn C. Cricchio, was an employee of a Georgia corporation. During this period a sum of \$23.31 Georgia State taxes was withheld from her pay.

CONCLUSIONS OF LAW

A. A member of the Armed Forces who was domiciled in New York State at the time he entered such service generally retains his status as a domiciliary of New York State throughout his period of armed service, regardless of where he may be assigned to duty or for how long. Accordingly, a member of the Armed Forces who was domiciled in New York at the time of entrance into military service continues to be taxed as a New York resident unless during the taxable year he satisfied all of the following three conditions:

1) Maintained no permanent place of abode in New York; 2) maintained a permanent place of abode outside New York; and 3) did not spend thirty days or more in New York. Tax Law, section 605, Reg. section 102.2 (b).

Petitioners do not qualify as nonresidents, since they spent more than 30 days in New York State during 1970, and did not maintain a permanent place of abode without New York for the entire year.

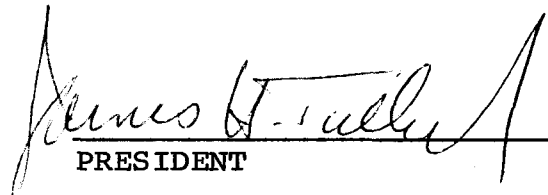
B. Ordinarily a wife's domicile follows that of her husband, but if they are separated in fact she may under some circumstances acquire her own separate domicile. Since no evidence has been produced by petitioner, Joseph A. Cricchio, that his wife Marylyn's presence in Georgia was under circumstances different than his own, her domicile would be the same as his.

C. Where a resident individual receives income derived from sources within another state of the United States, he is entitled to a credit against his New York tax for any income tax imposed on such income by the other jurisdiction. Tax Law, Section 620(a), Reg. section 121.1. Petitioners have substantiated \$23.31 as a credit for Marylyn C. Cricchio's income tax for the State of Georgia.

D. The deficiency is modified accordingly and as modified is sustained, and the taxpayers' petition is denied. The deficiency is redetermined and modified by the above allowance.

DATED: Albany, New York  
December 18, 1975

STATE TAX COMMISSION

  
PRESIDENT

\_\_\_\_\_  
COMMISSIONER

  
COMMISSIONER