

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SALVATORE P. AND ROSE M. ALBICOCCO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article (22) of the  
Tax Law for the Year(s) or Period(s)  
1970

State of New York  
County of Albany

Bruce Batchelor, 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 7th day of March, 1977, she served the within Notice of Decision by (certified) mail upon Salvatore P. and Rose M. Albicocco ~~(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. Salvatore P. Albicocco  
30 Penn Avenue  
Oakwood Heights  
Staten Island, New York  
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 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

7th day of March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 7, 1977

TELEPHONE: (518) 457-1723

Mr. and Mrs. Salvatore P. Albicocco  
30 Penn Avenue  
Oakwood Heights  
Staten Island, New York

Dear Mr. and Mrs. Albicocco:

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

Please take further notice that pursuant to  
Section(X) 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia  
Supervisor of Small  
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SALVATORE P. AND ROSE M. ALBICOCCO : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Year 1970. :  
:

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Petitioners, Salvatore P. and Rose M. Albicocco, 30 Penn Avenue, Oakwood Heights, Staten Island, New York, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 059278391). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 27, 1976 at 9:15 A.M. Petitioner, Salvatore P. Albicocco, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul Rosenkrantz, Esq., of counsel).

ISSUES

I. Were the petitioners, Salvatore P. and Rose M. Albicocco, resident individuals within the meaning of section 605 of the Tax Law during the year 1970?

II. In what amounts were the petitioners entitled to deductions for a rental loss, contributions and moving expenses?

FINDINGS OF FACT

1. Petitioners, Salvatore P. and Rose M. Albicocco, filed a joint New York State income tax resident return for 1970. On this return they indicated that they were residents of New York from September 1, 1970 to December 31, 1970 and included in total income only those wages attributable to that period of residency.

2. On December 5, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Salvatore P. and Rose M. Albicocco, for additional personal income tax due in the sum of \$512.92 for the year 1970. In the Statement of Audit Changes, the Income Tax Bureau asserted that the petitioners were domiciliaries of New York State during 1970 and that they did not meet the conditions in section 605 of the Tax Law which would entitle them to nonresident status. In addition deductions for a rental loss, contributions and moving expenses were disallowed for lack of substantiation. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency on December 28, 1973.

3. Petitioner, Salvatore P. Albicocco, was employed by the United States Army Corps of Engineers. In 1965, he accepted a work assignment by the corps in Terrenia, Italy. He remained in Italy until August, 1970 at which time he returned to the United States. Upon his return to the United States, he sought employment in the State of Florida, but being unsuccessful in his attempt, he returned to New York State. On September 1, 1970,

he moved into a two-family dwelling owned by him which he acquired in 1960. This dwelling was his residence prior to his departure for Italy in 1965.

4. Petitioners, Salvatore P. and Rose M. Albicocco, did not change their citizenship nor did they vote in Italy. They did not purchase any real property in Italy.

5. Petitioners, Salvatore P. and Rose M. Albicocco, included wages attributable to his work in Italy on their U.S. individual income tax return for 1970. The total wages and salaries included on said return was \$18,711.60.

6. Petitioners, Salvatore P. and Rose M. Albicocco, have properly substantiated expenses which resulted in net loss from rents in the sum of \$930.00. They have also substantiated contributions in the sum of \$238.50 and moving expenses of \$1,712.00 over and above those expenses reimbursed by petitioner, Salvatore P. Albicocco's employer.

#### CONCLUSIONS OF LAW

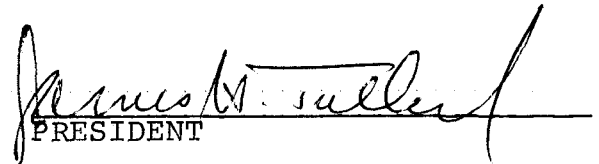
A. That the petitioners, Salvatore P. and Rose M. Albicocco, were domiciliaries of New York State during 1970 and for the year 1970 they failed to satisfy all three requirements which would enable them to be nonresidents of New York for income tax purposes within the meaning and intent of section 605(a) of the Tax Law and in accordance with 20 NYCRR 102.2(b).

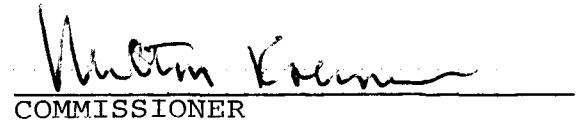
B. That the petitioners, Salvatore P. and Rose M. Albicocco, have sustained a net loss from rents in the sum of \$930.00 for the year 1970. The petitioners are also entitled to deductions for contributions and moving expenses in the amounts of \$238.50 and \$1,712.00 respectively.

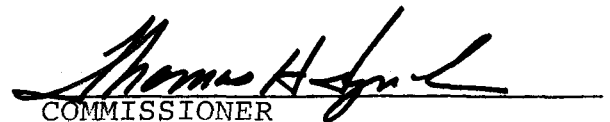
C. That the petition is granted to the extent that a rental loss of \$930.00, and deduction for contributions of \$238.50 and moving expenses of \$1,712.00 are allowed. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued December 28, 1973; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
March 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER