In the Matter of the Petition

of

MARVIN and JUDY STONE

AFFIDAVIT OF MAILING

State of New York County of

John Huhn

, being duly sworn, deposes and says that

John Huhn

She is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of April , 1978 , She served the within DECISION by (certified) mail upon Marvin and Judy Stone

****************** the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Marvin and Judey Stone

343 East 30th Street (Apt. 1-M)

New York, NY 10016

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.

Sworn to before me this

24th day of April

, 1978.

Much



JAMES H. TULLY JR., PRESIDENT MILTON KOERNER THOMAS H. LYNCH STATE OF NEW YORK STATE TAX COMMISSION TAX APPEALS BUREAU ALBANY, NEW YORK 12227

April 24, 1978

Marvin and Judy Stone 343 East 30th Street Apt. 1-M New York, NY 10016

Dear Mr. & Mrs. Stone:

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) of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Ch

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and JUDY STONE

DECISION

for Redetermination of a Deficiency or : for Refund of Personal Income Tax under Article 22 of the Tax Law for the: Years 1968 and 1969.

Petitioners, Marvin and Judy Stone, 343 East 30th Street (Apt. 1-M), New York, New York 10016, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 13731).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1977 at 9:15 A.M. Petitioner Marvin Stone appeared <u>pro se</u> and for his wife, petitioner Judy Stone. The Income Tax Bureau appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in California during the years 1968 and 1969.

FINDINGS OF FACT

1. Petitioner Marvin Stone was a resident of New York and a medical student at New York Medical College until his graduation in May of 1968. Prior to his graduation, petitioner Marvin Stone applied for and obtained an internship in a San Francisco hospital. The internship began at the end of June of 1968.

- 2. Petitioners timely filed New York State income tax returns for the years 1968 and 1969.
- 3. On April 10, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioners for the years 1968 and 1969 in the amount of \$495.70, plus interest of \$71.84, for a total due of \$567.54. The Income Tax Bureau contended that petitioners temporary removal from New York State for purposes of employment did not constitute a change of their domicile; therefore, income earned by petitioners during the years in question was taxable to New York State.
- 4. Before moving to an apartment in San Francisco in June of 1968, petitioners had sold all their furniture in New York. Thereafter they maintained no place of abode in New York until their return in July of 1969.
- 5. Petitioner Judy Stone decided to attend medical school before she and her husband moved to California. They returned to New York in 1969, upon petitioner Judy Stone's acceptance at the New York University School of Medicine. Petitioners contended that their sole reason for returning to New York was that said university was the only school to accept petitioner Judy Stone. Rejection letters from various medical schools indicated that petitioner Judy Stone applied to schools in California, Texas, New Jersey, Pennsylvania, Washington, D.C., and New York.
- 6. Petitioner Marvin Stone argued that he and his wife left New York to set up a permanent residence in California and that had it not been for petitioner Judy Stone's acceptance at a New York medical school, they would not have returned.
- 7. Petitioners voted by absentee ballots for the State of New York in the 1968 election. They contended that their reason for doing so was that they were unable to meet the California voter residence requirements and did not wish to forego their right to exercise their vote. However, petitioners were uncertain as to whether or not they had registered to vote in California after the 1968 election.

- 8. Petitioner Marvin Stone was a member of the "Berry Plan" during his last year of medical school. As a member of the plan, he was required to serve in the army upon completion of his internship program. No request was made by Marvin Stone to serve in the San Francisco area.
- 9. Petitioners contended that their intention to remain in California was further evidenced by the fact that Judy Stone attended San Francisco City College, which permitted only California residents to enroll. Petitioners however did not introduce any documentary evidence to show that this was the policy of the college.

CONCLUSIONS OF LAW

- A. That petitioners, Marvin and Judy Stone, have failed to sustain the burden of proof required to show that it was their intention to abandon their New York domicile and make California their permanent home; therefore, they are considered to have been domiciled in New York State during the years 1968 and 1969. Since petitioners spent more than 30 days within New York State during each of the years at issue, they are considered residents of New York State for income tax purposes. All of their income for said years is thus subject to New York State personal income tax.
- B. That the petition of Marvin and Judy Stone is denied and the Notice of Deficiency issued April 10, 1972 is sustained.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION

PRESTDENT

COMMISSIONER

COMMISSIONER

TAX APPEALS BUREAU

To ... Secretary to the State Tax Commission Petition to be mailed May 2, 1978.

 J_{oseph} $\mathit{Chy_{rywa_{ty}}}$ Hearing Examiner

In the Matter of the Petition

of

MARVIN and JUDY STONE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) or Period(s)
1968 and 1969

State of New York County of Albany

John Huhn , 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 2nd day of May , 1978, she served the within Notice of Decision by (certified) mail upon Judy Stone

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Judy Stone

330 E. 33rd Street

Apt. 2M

New York, NY 10016 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.

John Huhn

Sworn to before me this

2nd day of May

, 1978.

Musele



JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
May 2, 1978

Judy Stone 330 E. 33rd Street Apt. 2M New York, NY 10016

Dear Ms. Stone:

Please take notice of the 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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty Hearing Examiner

REXIX Retitioneria, Reservantetiva

Taxing Bureau's Representative