

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Carlos A. & Mari Carmen B. Arredondo :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of June, 1980, he served the within notice of Decision by certified mail upon Carlos A. & Mari Carmen B. Arredondo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carlos A. & Mari Carmen B. Arredondo
35 Field Point Cir.
Greenwich, CT 06830

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Carlos A. & Mari Carmen B. Arredondo
35 Field Point Cir.
Greenwich, CT 06830

Dear Mr. & Mrs. Arredondo:

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 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CARLOS A. ARREDONDO and MARI CARMEN B. ARREDONDO
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1973.

DECISION

Petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, 35 Field Point Circle, Greenwich, Connecticut 06830, 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 1973 (File No. 13520).

A formal hearing was commenced before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 14, 1976 at 9:15 A.M. Petitioner appeared by Henry L. Glenn, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel). The hearing was continued to conclusion before Frank A. Romano, Hearing Officer, at the same location on October 6, 1977 at 2:45 P.M. Petitioner Carlos A. Arrendondo appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Andrew S. Haber, Esq., of counsel).

ISSUE

Whether petitioners, who effected a change of domicile from New York State to Connecticut on September 1, 1973, were entitled to prorate and deduct non-New York partnership losses against income accrued to petitioners' resident period, where such non-New York partnerships report on a calendar year basis, notwithstanding the fact that such losses could otherwise have been deductible

by said petitioners had they maintained their status as New York State resident individuals for the entire year 1973.

FINDINGS OF FACT

1. Petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, jointly filed both New York State resident and nonresident income tax returns for 1973, conceding New York State residency for the period January 1, 1973 to August 31, 1973, but claiming nonresidency from September 1, 1973 to December 31, 1973 (hereinafter sometimes referred to as the "nonresident period"), and indicating their address as 35 Field Point Circle, Greenwich, Connecticut.

2. On June 30, 1975, the Income Tax Bureau issued a revision of the Statement of Audit Changes originally issued August 20, 1974, computing additional income tax for 1973 of \$35,089.44, plus interest of \$3,180.62, for a total of \$38,279.08, on the following grounds:

(a) Compensation of \$21,412.00 received by petitioner Carlos A. Arredondo during the period September 1, 1973 to December 31, 1973 was deemed subject to taxation in New York State in proportion to the number of days worked in this State, over the total number of days worked during the period in question ($65/82 \times \$21,412.00$).

(b) Rental losses from office buildings owned as tenants in common is limited to (8) months, period of residence; and the recomputation of minimum tax is limited to 8/12 of the accelerated depreciation on the office buildings owned as tenants in common (sic).

(c) Partnership losses from certain properties known as Barclay Square and Barcelona, located without New York State, were disallowed because the partnerships (of which petitioner Carlos A. Arredondo, was a member) were on a calendar year accounting period and thereby reportable at the end of 1973

which was during said petitioner's nonresident period. Consequently, it was determined that such partnership losses were not derived from or connected to New York sources.

3. A Notice of Deficiency dated December 22, 1975 was issued against petitioners indicating a deficiency in tax of \$35,098.44, plus interest of \$4,442.40.

4. Petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, conceded that

"...there is now no issue of fact and no issue of law between the (State) Tax Commission and the taxpayers with respect to 1973, with one exception - the disallowance of the deduction in either their resident or non-resident return of \$438,690.00 representing the distributive share of Carlos Arrendo (sic) of losses suffered by partnerships owning and operating two buildings ... known as Barclay Square and Barcelona, of which he was a member." (Pet. Exh. 2)

Accordingly, the Income Tax Bureau's position concerning said petitioners' tax deficiency as set forth in subparagraphs (a) and (b) of paragraph 2, supra, are not at issue in this proceeding.

5. The parties hereto stipulated, insofar as is relevant to this proceeding, to the following facts:

(a) During the period January 1, 1973 to August 31, 1973, petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, were domiciled in and maintained a permanent place of abode in the City and State of New York.

(b) During the nonresident period, said petitioners were domiciled in and maintained a permanent place of abode in the State of Connecticut.

(c) During 1973, petitioner Carlos A. Arredondo maintained a business office at 270 Park Avenue, City and State of New York, spending all but 17 business days of that entire year in New York State.

(d) During 1973, petitioner Carlos A. Arredondo was a partner in four partnerships: Arredondo & Co.; I. Reiss & Co.; Barclay Square; and Barcelona. Arredondo & Co. and I. Reiss & Co. transacted business in the State of New York and received income derived from or connected to New York sources. Barclay Square and Barcelona owned and operated apartment buildings located in Wichita, Kansas and Tucson, Arizona, respectively, and did not receive income derived from or connected with New York sources. All four partnerships maintained their books and filed their income tax returns on a cash and calendar year basis.

CONCLUSIONS OF LAW

A. That petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, effected a change of domicile from New York State to Connecticut September 1, 1973 and thus became nonresident individuals within the meaning and intent of section 605(b) of the Tax Law.

B. That where, as in the instant proceeding, there is a change of status during the tax year from resident to nonresident, section 654 of the Tax Law has application. Kritzik v. Gallman, 41 A.D.2d 994, 344 N.Y.S.2d 107.

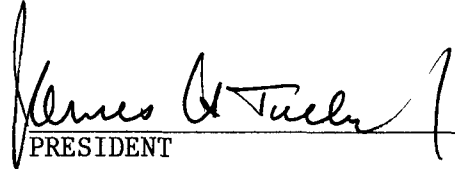
C. That, pursuant to section 654(b) of the Tax Law and 20 NYCRR 148.6, petitioners, Carlos A. Arredondo and Mari Carmen B. Arredondo, may not deduct partnership losses against income accrued to said petitioners' resident period, where such partnerships report on a calendar year basis, thereby ending their taxable years and reporting such losses during said petitioners' nonresident period. Kritzik v. Gallman, (supra). See also, Arredondo v. State, 55 A.D.2d 978, 390 N.Y.S.2d 653 (3rd Dept. 1977); appeal dismissed, 42 N.Y.2d 823, 396 N.Y.S.2d 1028 (1977); motion for leave to appeal denied, 42 N.Y.2d 807, 398 N.Y.S.2d 1029 (1977).

D. That the petition of Carlos A. Arredondo and Mari Carmen B. Arredondo is denied in all respects and the Notice of Deficiency issued on December 22, 1975 is sustained.

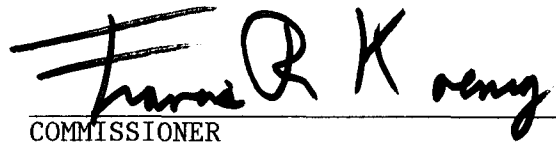
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980


PRESIDENT


COMMISSIONER


COMMISSIONER