

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Angelo & Micheline Recchia :
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 1970. :

AFFIDAVIT OF MAILING

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Angelo & Micheline Recchia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Angelo & Micheline Recchia
107 Margo La.
Longwood, FL 32750

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Angelo & Micheline Recchia :
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 1970. :

AFFIDAVIT OF MAILING

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Micheline Recchia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Micheline Recchia
107 Margo Ln.
Longwood, FL 32750

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
20th day of June, 1980.

Joanne Krapp

J. J. Kelly

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

June 20, 1980

Angelo & Micheline Recchia
107 Margo La.
Longwood, FL 32750

Dear Mr. & Mrs. Recchia:

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
Micheline Recchia
107 Margo Ln.
Longwood, FL 32750
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ANGELO RECCHIA and MICHELINE RECCHIA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970.

Petitioners, Angelo Recchia and Micheline Recchia, 107 Margo Lane, Longwood, Florida, 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 1970 (File No. 15765).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 1, 1978 at 11:00 A.M. Petitioners appeared by Micheline Recchia. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

- I. Whether petitioners were domiciliaries of New York State during 1970.
- II. Whether petitioners were resident individuals of New York State during 1970.

FINDINGS OF FACT

1. Petitioners, Angelo Recchia and Micheline Recchia, did not file a New York State personal income tax return for the year 1970.

2. On January 15, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners stating that since petitioners "failed to reply to our letter of July 21, 1972, your 1970 personal income tax liability has been computed from information on file in our office". The statement computed petitioners' tax at \$11,452.00 less the \$25.00 statutory credit and asserted a penalty for failure to file a return and a penalty to pay the tax when due and interest. On March 31, 1975, the Bureau issued a Notice of Deficiency to petitioner in the amount of \$11,427.00 net tax due, plus penalties and interest.

3. Petitioners concededly had been domiciled in New York State for at least 25 years prior to their departure from New York in August of 1968. At the time of their departure, petitioners owned a home in Valley Stream, New York.

4. In August of 1968, petitioners moved to Florida where they occupied a rented apartment. Petitioners retained ownership of their Valley Stream residence at the time of this move. Their emancipated son lived in it with his family, making the mortgage payments in lieu of rent, and paying the utility costs associated with that house.

5. In August of 1968, all but one of petitioners' minor children accompanied them to Florida. The remaining child remained in New York in order to complete high school with her friends.

6. Petitioner Micheline Recchia returned to New York in February of 1969 to arrange for the sale of the Valley Stream house. That house was vacated by petitioners' son at that time.

7. Micheline Recchia lived in New York from February through June of 1969 at the home of one of her sisters. In June of 1969, the sale of the Valley Stream house was consummated, whereupon petitioner Micheline Recchia returned to Florida.

8. Petitioners purchased a house in the State of Florida in August of 1969 as tenants by the entirety and occupied it. Petitioners sold this house at the beginning of 1971 and did not purchase another house in Florida until early 1972.

9. Petitioner Micheline Recchia, unhappy with the Florida move and her absence from her own family, returned to New York in June of 1970, where she initially stayed at the house of her sister.

10. She was accompanied on her return to New York by the majority of her minor children. Angelo Recchia did not then accompany his wife. Health and business considerations influenced Mr. Recchia's decision to remain in Florida.

11. In June of 1970, Micheline Recchia, using money provided by her husband, purchased a home in Franklin Square, New York, in her sole name, where she remained for the rest of 1970 with her two younger children. Their son who was nearly 18 spent much of his time in Florida, returning to New York from time to time when he no longer wanted to stay in Florida. The Franklin Square home was furnished with furniture from petitioners' Florida house.

12. Petitioner Micheline Recchia neither wanted to nor intended to leave the State of New York on a permanent basis during the period herein involved. She accompanied her husband as a concession to his health and business needs and left to return to New York when the Florida stay threatened to become permanent.

13. Angelo Recchia returned to New York in late June of 1970 for seven days and returned to Florida briefly. Beginning on July 4, 1970, he lived in New York with his wife for 160 days in 1970, always returning after brief trips to Florida. Mr. Recchia lived in Franklin Square with his wife almost continuously from July 4, 1970 until the end of the school year in June of 1972. In June of 1972, petitioners moved to Florida with their minor children.

to occupy a house purchased earlier that year. The Franklin Square house was subsequently sold.

14. Petitioners' joint United States Income Tax Return for 1970, filed in 1971, shows as their address, the house Mrs. Recchia owned in Franklin Square, New York.

15. Findings of Fact "3" through "14" establish no clear intention that either petitioner remain permanently in Florida until more than a year after 1970, the year in issue.

CONCLUSIONS OF LAW

A. That petitioners, Angelo Recchia and Micheline Recchia, have not sustained the burden of showing that they changed their domicile from New York to Florida anytime before or during 1970 [20 NYCRR 102.2(d) (2)].

B. That petitioners were domiciled in New York in 1970.

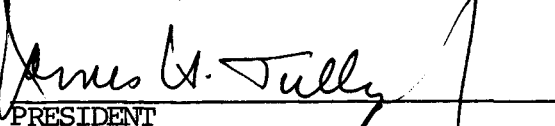
C. That petitioners' domicile in New York State in 1970 and the sojourn of each therein for more than thirty days in the aggregate during that year made them resident individuals within the meaning of section 605(a) of the Tax Law. Accordingly, petitioners' income is taxable as the income of resident individuals under section 611 of the Tax Law rather than as non-resident individuals under section 631 of the Tax Law.

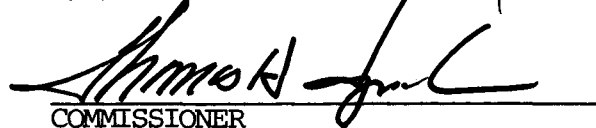
D. That the petition of Angelo and Micheline Recchia is denied and the Notice of Deficiency is sustained.

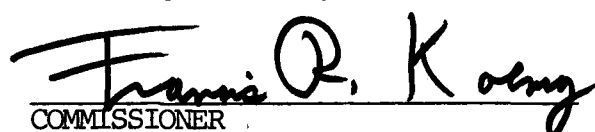
DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER