

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Philip & Estelle Rubin :
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 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Philip & Estelle Rubin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip & Estelle Rubin
62-95 Saunders St.
Apt. 4-D
Rego Park, NY 11374

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
3rd day of October, 1980.

Robert Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Philip & Estelle Rubin :

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 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Edward Lorell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Edward Lorell
1250 Sixth Ave.
New York, NY 10019

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
3rd day of October, 1980.

Lubbe Bank

J. Vredenburg

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

October 3, 1980

Philip & Estelle Rubin
62-95 Saunders St.
Apt. 4-D
Rego Park, NY 11374

Dear Mr. & Mrs. Rubin:

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
Edward Lorell
1250 Sixth Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHILIP RUBIN and ESTELLE RUBIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Philip Rubin and Estelle Rubin, 62-95 Saunders Street, Rego Park, New York 11374, 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 1974 (File No. 19716).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 24, 1980 at 1:00 P.M. Petitioner Philip Rubin appeared with Edward Lorell. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Philip Rubin was domiciled in, and a resident of New York State during the entire year 1974.

FINDINGS OF FACT

1. Petitioners, Philip Rubin and Estelle Rubin, timely filed a New York State Combined Income Tax Return for the year 1974 wherein, per computations on a Schedule for Change of Resident Status attached thereto, petitioner Philip Rubin reported only those wages earned prior to his alleged change of residence. On the back of said schedule petitioner wrote "wife resident full year". Additionally, petitioner Philip Rubin filed a New York State Claim for

Resident Tax Credit wherein a credit of \$224.24 was claimed for taxes paid to the State of Pennsylvania, on wages earned in said state during the portion of the year in which petitioner is purported to have been a bona fide resident of Pennsylvania. To evidence petitioner's Pennsylvania tax liability, he submitted a copy of his 1974 tax return filed with said state, wherein, "nonresident" was checked as his residency status, with New York indicated as his state of residence. All the aforementioned documents listed petitioner's address as 62-65 Saunders Street, Rego Park, New York.

2. On May 23, 1977 the Audit Division issued a Statement of Audit Changes to petitioner Philip Rubin wherein it held that he did not effect a change of domicile during 1974 and accordingly held all his income as taxable to New York. Additionally on said date, a Statement of Audit Changes was issued to Estelle Rubin, wherein since she had filed as a full year resident, the sole adjustment was the reduction of her claimed itemized deductions. This was done to allow a more beneficial apportionment of such deductions between petitioners, based on the increased adjusted New York income of Philip Rubin as explained above. Accordingly, a separate Notice of Deficiency was issued against each petitioner on May 23, 1977, asserting additional personal income tax of \$960.84, plus interest of \$171.85, for a total due from Philip Rubin of \$1,132.69, and additional personal income tax of \$401.17, plus interest of \$71.75, for a total due from Estelle Rubin of \$472.92.

3. Petitioner Philip Rubin contended that he changed his domicile and residence from New York to the State of Pennsylvania on June 20, 1974, when he began employment as an investigator with the special prosecutor's office in Philadelphia. Prior to such time petitioner was a bona fide resident of New York State.

4. Petitioner Philip Rubin contended that he left his employment as a detective with the New York City Police Department to accept the above stated Pennsylvania employment since it appeared to be beneficial to his career. He contended that at the time of his move, his intent was to remain in Pennsylvania permanently.

5. Petitioners moved to Philadelphia, Pennsylvania, where they lived in a furnished apartment which was rented on a month to month basis.

6. After removal from New York State petitioner's continued to maintain their New York apartment located at 62-65 Saunders Street, Rego Park, New York. Petitioner Philip Rubin testified that he maintained the apartment so that his wife, who continued to work in New York could stay there on days she was required to work late.

7. Petitioners continued to maintain a New York bank account while they lived in Pennsylvania.

8. In January, 1975 petitioner Philip Rubin decided to terminate his employment in Philadelphia and both he and his wife moved back to their New York apartment.

CONCLUSIONS OF LAW

A. That a domicile once established continues until the person in question moves to a new location with a bona fide intention of making his fixed and permanent home there. No change of domicile results from the removal to a new location if the intention is to remain there only for a limited time (20 NYCRR 102.2(d)(2)).

B. That petitioner, Philip Rubin has not sustained his burden of proof required pursuant to section 689(e) of the Tax Law, to show that he intended to remain premenently in Pennsylvania. Accordingly, he is therefore deemed to have been domiciled in New York State during the entire year 1974.

C. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

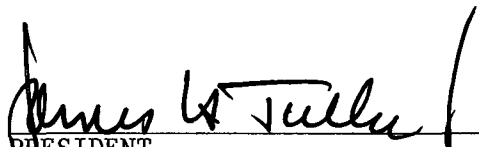
Since petitioner Philip Rubin has not satisfied the above stated requirements he is deemed to have been a resident of New York State during the entire year 1974.

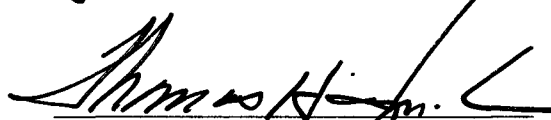
D. That the petition of Philip Rubin and Estelle Rubin is denied, and the notices of deficiency dated May 23, 1977 are sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER