

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur & Lillian Siegel :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income & UBT :
under Article 22 & 23 of the Tax Law :
for the Year 1972. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Arthur & Lillian Siegel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur & Lillian Siegel
877 NE 195th St.
No. Miami Beach, FL 33162
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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Arthur & Lillian Siegel :
for Redetermination of a Deficiency or a Revision :
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Personal Income & UBT :
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for the Year 1972. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Walter Fish 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. Walter Fish
600 Old Country Rd.
Garden City, NY 11530

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Arthur & Lillian Siegel
877 NE 195th St.
No. Miami Beach, FL 33162

Dear Mr. & Mrs. Siegel:

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 & 722 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
Walter Fish
600 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR SIEGEL and LILLIAN SIEGEL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Year 1972.	:	

Petitioners, Arthur Siegel and Lillian Siegel, 877 N.E. 195th Street, N. Miami Beach, Florida 33162, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972 (File No. 15641).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1979 at 2:45 P.M. Petitioners appeared by Walter Fish, CPA. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners were nonresidents of New York State during the entire calendar year 1972.

FINDINGS OF FACT

1. Petitioners, Arthur Siegel and Lillian Siegel, timely filed a joint New York State Income Tax Resident Return for the year 1972, on which it was indicated that their period of New York residence was January 1, 1972 to August 31, 1972. All income and deduction items were allocated so as to exclude those items which occurred after August 31, 1972. In addition, a

New York State Unincorporated Business Tax Return was filed for the year 1972 by petitioner Arthur Siegel for a New York sole proprietorship doing business under the name and style of Clarkson Uniform Shop. This business return indicated that the unincorporated business terminated its activities on August 30, 1972, and accordingly reported income and expenses occurring prior to August 31, 1972.

2. On November 12, 1975, the Income Tax Bureau received a New York State Income Tax Nonresident Return from petitioners, Arthur Siegel and Lillian Siegel, for the year 1972, marked "Amended Return". This return indicated that petitioners did not reside in New York State during the entire year 1972, and reported only that income realized from the New York unincorporated business. In addition, an "amended" New York State Unincorporated Business Tax Return was filed by petitioner Arthur Siegel for the year 1972, on which he reduced an "addition" modification for unincorporated business taxes paid to New York City that were previously reported on the original business return. The amended business return also indicated that it terminated its business activities on August 30, 1972 and reported the business's income and expenses accordingly. The aforementioned returns filed requested a net refund of \$664.34.

3. On December 8, 1975, the Department of Taxation and Finance validated a consent signed by Walter Fish, CPA, under a power of attorney, extending the period of limitation to April 15, 1977 for the assessment of personal income and unincorporated business taxes for the year 1972.

4. On May 24, 1976, the Audit Division issued a Notice of Deficiency for \$5,338.24 excluding interest, which consisted of additional personal income tax due of \$4,673.90, plus the refund claim of \$664.34 previously submitted on amended returns (See Finding of Fact No. 2). The aforementioned deficiency was issued with an explanatory Statement of Audit Changes (originally issued on February 11, 1976), which described the adjustments as follows:

"Since you did not meet the requirements under Section 654(c)(1) of the Tax Law, the net gain from the installment sale of the business is accrued & included and taxed at 50% plus 20%, as long term capital gain."

"The remainder of the long term capital gain, not subject to N.Y. personal income tax, is considered to be an item of preference & subject to the N.Y. minimum tax."

"Modification has been made to itemized deductions for allocable expenses attributable to items of tax preference in excess of specific deductions."

"Modification of N.Y. City unincorporated business tax should have been modified for personal income tax in the amount of \$2,663.33. However, it is a proper deduction on the business return."

In addition, the personal income tax liability was computed based on the determination that petitioners, Arthur Siegel and Lillian Siegel, resided in New York State until August 31, 1972. This determination was contested by petitioners. Interest and dividend income previously allocated on the original State return (See Finding of Fact No. 1) was deemed to have been earned during petitioners' period of New York residency and, therefore, fully taxable under Article 22 of the Tax Law. This adjustment was not challenged by petitioners. The amended Unincorporated Business Tax Return received by the Income Tax Bureau on November 12, 1975 was accepted as filed and is not at issue.

5. Petitioners, Arthur Siegel and Lillian Siegel, were residents of New York State when they purchased a condominium in Florida on September 15, 1970. Petitioners contended that on November 10, 1970 they moved to Florida and that petitioner Arthur Siegel commuted from Florida to New York State until the fall of 1971 for purposes of managing and operating his business, the Clarkson Uniform Shop. They further contended that after the fall of 1971, petitioner Arthur Siegel did not return to New York State except for two weeks in July, and one week in August, 1972 that was spent in New York State for the purpose of managing and/or selling his New York business.

6. Petitioners, Arthur Siegel and Lillian Siegel, continued to maintain their apartment in New York State until August, 1972.

7. In August, 1972, petitioner sold his New York business on the installment basis with the first payment due in 1973 and the last payment due in 1979. For Federal income tax purposes, petitioner elected to report the capital gain from the sale of the business on the installment basis.

8. Although petitioners reported a change in their status from resident to nonresident on their original New York State Personal Income Tax Resident Return filed, a bond or other security was not filed.

CONCLUSIONS OF LAW

A. That petitioners, Arthur Siegel and Lillian Siegel, have failed to sustain the burden of proof as required under section 689(e) of the Tax Law, to establish that they changed their status from New York residents to nonresidents prior to August 31, 1972.

B. That petitioners, Arthur Siegel and Lillian Siegel, effectuated a change of domicile from New York State to Florida on August 31, 1972 in accordance with the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2.

C. That section 654 of the Tax Law provides that if an individual changes his status from resident to nonresident during the taxable year, he must accrue any item of income or gain accruing prior to the change of status, unless the individual files with the Tax Commission a bond or other security. Accordingly, since petitioner failed to comply with section 654 of the Tax Law, the capital gain from the sale of the New York unincorporated business is reportable in full on the resident portion of the 1972 New York personal income tax return.

D. That the refund request pursuant to the "amended" New York State Income Tax Nonresident Return and the "amended" Unincorporated Business Tax Return received November 12, 1975 is denied.

E. That the Audit Division is hereby directed to modify the Notice of Deficiency issued May 24, 1976 to reflect the net additional personal income tax due of \$4,673.90, together with such interest as may be lawfully owing.


F. That the petition of Arthur Siegel and Lillian Siegel is denied, and the Notice of Deficiency issued May 24, 1976 is sustained, as modified in paragraph "E" of this decision.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER