

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anthony W. Sylstra :
and Carol Sylstra : 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 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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Anthony W. Sylstra, and Carol Sylstra, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

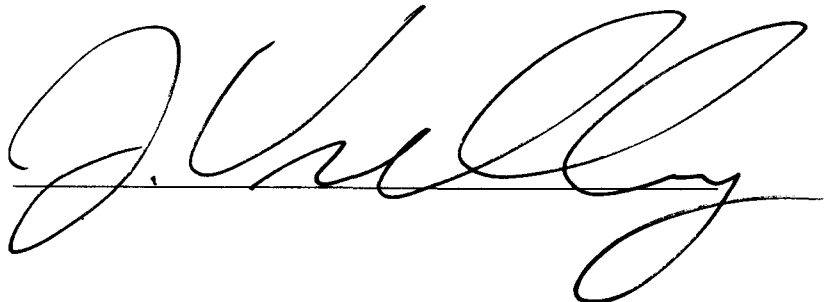
Anthony W. Sylstra
and Carol Sylstra
8124 Fallbrooke Dr.
Bon Air, VA 23235

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
18th day of July, 1980.

Esther A. Bank



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

July 18, 1980

Anthony W. Sylstra
and Carol Sylstra
8124 Fallbrooke Dr.
Bon Air, VA 23235

Dear Mr. & Mrs. Sylstra:

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	:	
ANTHONY W. SYLSTRA and CAROL SYLSTRA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioners, Anthony W. Sylstra and Carol Sylstra, 8124 Fallbrooke Drive, Bon Air, Virginia 23235, 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 1972 (File No. 16121).

On February 15, 1980, petitioners informed the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether petitioner Anthony W. Sylstra was a resident of New York State for all, or part, of the year 1972.

FINDINGS OF FACT

1. Petitioners, Anthony W. Sylstra and Carol Sylstra, timely filed a joint New York State Income Tax Resident Return for the period May 1, 1972 to December 31, 1972, on which he excluded \$17,472.00 in military wage income earned prior to May 1, 1972.

2. On July 29, 1974, the Audit Division issued a Notice of Deficiency in the sum of \$892.47, along with an explanatory Statement of Audit Changes, on

which petitioners were found to be domiciliaries of New York State for the entire year 1972, and all income earned during that year was held subject to the personal income tax under Article 22 of the Tax Law.

3. Petitioner Anthony W. Sylstra was a native and resident of New York State when he departed to the State of Illinois due to marital problems. Subsequently, petitioner Anthony W. Sylstra departed for, and obtained employment in, the State of Ohio.

4. In June, 1965 petitioner Anthony W. Sylstra departed for and obtained employment in the State of California. Petitioner did not submit, and the record did not contain, any evidence or information relating to the nature of his place of abode, voter registration, driver's license, bank accounts or other indicia of intent.

5. On December 20, 1965, petitioner Anthony W. Sylstra was found to be "fully acceptable for induction into the armed forces" by a local draft board in Los Angeles, California. Petitioner contended that he requested that he be inducted from the State of New York, so that he could have the opportunity to visit his parents and children prior to his entry into military service.

6. In March, 1966, petitioner Anthony W. Sylstra entered military service through an induction center in Syracuse, New York. Subsequently, petitioner received basic training in Fort Dix, New Jersey and was commissioned in Fort Benning, Georgia in May, 1967.

7. In June, 1968, petitioner was assigned to Vietnam for a period of one year. Shortly after returning to the United States, petitioner married petitioner Carol Sylstra, who was a native and resident of New York State. After his marriage in August, 1969, petitioner Anthony W. Sylstra was assigned to an army depot in Seneca, New York, where he and his wife resided in government quarters.

8. In December, 1970, petitioner was stationed in Germany, where he resided in nongovernment quarters. During the early part of 1972, petitioner was informed that he would be discharged early due to military cutbacks. Anticipating his early discharge, petitioner mailed a number of resumes to various firms located throughout the United States, including the State of New York.

9. On May 1, 1972, petitioners, Anthony Sylstra and Carol Sylstra, returned to New York State. In July, 1972, petitioner Anthony W. Sylstra secured employment in the City of New York.

10. Petitioners, Anthony W. Sylstra and Carol Sylstra, filed New York State income tax resident returns for the years 1969, 1970 and 1971.

11. Petitioner Anthony W. Sylstra submitted a notarized statement, indicating that upon his arrival in the State of California (June, 1965), he intended to remain there and never return to New York State.

CONCLUSIONS OF LAW

A. That the burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individuals intention in this regard, his declaration will be given due weight, but they will not be conclusive, if they are contradicted by his conduct (20 NYCRR 102.2(d)(2)).

B. That petitioners, Anthony W. Sylstra and Carol Sylstra, have failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that a new domicile was effectuated subsequent to his departure in 1965, or prior to his return (to New York State) on May 1, 1972.

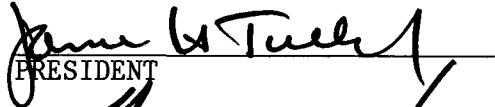
C. That petitioners, Anthony W. Sylstra and Carol Sylstra, were residents of the State of New York during the entire year 1972 in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

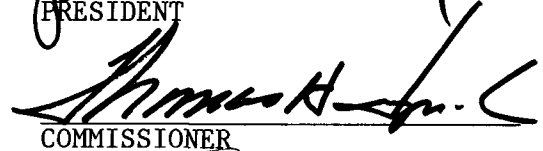
D. That the petition of Anthony W. Sylstra and Carol Sylstra is denied and the Notice of Deficiency issued July 29, 1974 is sustained, together with such additional interest as may be lawfully owing.

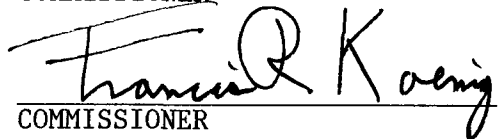
DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1980


PRESIDENT


COMMISSIONER


COMMISSIONER