

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sallie C. Melvin :
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 Years :
1971 & 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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Sallie C. Melvin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sallie C. Melvin
73 Riverside Ave. #2B
Stamford, CT 06905

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
30th day of October, 1981.

Gennie A. Hagedorn

J. Vredenburg

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

October 30, 1981

Sallie C. Melvin
73 Riverside Ave. #2B
Stamford, CT 06905

Dear Ms. Melvin:

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 TAX COMMISSION

In the Matter of the Petition :
of :
SALLIE C. MELVIN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1971 and 1972. :

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

II. Whether a resident credit for taxes paid to the State of Connecticut under that state's capital gains and dividends tax is an allowable credit against New York State income tax.

1. Petitioner, Sallie Melvin, timely filed New York State resident income tax returns for 1971 and 1972. On said returns she claimed resident credits for taxes paid to the State of Connecticut of \$548.63 for 1971 and \$146.52 for

1972. The 1971 income tax return showed an overpayment of \$496.54. Said overpayment was claimed on her 1972 income tax return as payments on New York State estimated tax.

2. On June 24, 1974 the Audit Division issued a Notice of Deficiency for 1971 and 1972 against petitioner for an amount due of \$660.22 including interest. Said notice was based on the disallowance of petitioner's claims for resident credits for 1971 and 1972 taxes paid to the State of Connecticut, and the disallowance of petitioner's credit for estimated tax for 1972, since the audit of her 1971 return resulted in no overpayment.

3. Petitioner contends she is a domicilliary and resident of Connecticut. Her residence in Connecticut is her parents' home in Stamford. Petitioner has use there of the second floor almost exclusively. Petitioner pays no money for the maintenance or upkeep of this home.

4. Petitioner was born in Connecticut, registers her car and is licensed and insured to operate her car there. She votes, does her banking, and has a library card and charge accounts in Connecticut. Petitioner is active in the community, is a member of the Board of Directors of the Stamford Y.W.C.A., and is on the Stamford Community Council.

5. Petitioner works in New York City and maintains an apartment there. Petitioner pays rent for, as well as decorating and other expenses of this apartment.

6. Petitioner admits that due to her employment she spends more than 183 days in New York. However, petitioner claims that she spends weekend nights, vacations and holidays either in Connecticut or otherwise outside of New York State. In addition, petitioner spends certain other weeknights in Connecticut in order to attend meetings of the Board of the Stamford Y.W.C.A. and the

Stamford Community Council. Thus, petitioner contends she spends in the aggregate less than 183 nights in New York State and she should be considered a nonresident.

7. During the periods at issue herein, the State of Connecticut imposed no general income tax on its residents, but did impose a tax on income from capital gains and dividends. (Title 12, Chapter 224, section 12-505 through 12-522, Connecticut General Statutes.)

8. Petitioner reported and paid taxes to the State of Connecticut under its capital gains and dividends tax on income of \$9,797.79 for 1971 and \$2,656.08 for 1972. These amounts were comprised in part of dividends from stocks owned by petitioner and handled in her account at the Stamford, Connecticut office of the brokerage firm of Merrill, Lynch, and Co. The remaining part of the above amounts subject to tax in Connecticut were disbursements to petitioner made upon termination of her employment with Grey Advertising, Inc., of New York, and represented petitioner's vested or accrued rights under Grey's profit sharing and retirement plans.

9. Petitioner asserts a credit should be allowed against her New York State income tax liability in the amount of \$548.63 for 1971 and \$146.52 for 1972, based on the aforementioned sums she reported to and was taxed on by the State of Connecticut.

CONCLUSIONS OF LAW

A. That section 605(a)(2) of the Tax Law defines the term a "resident individual" to include an individual "... who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 183 days of the taxable year in this state...".

B. That regulations promulgated by the State Tax Commission further provide that "an individual may be a resident of New York State for income tax purposes, and taxable as a resident, even though he would not be deemed a resident for other purposes. 20 NYCRR 102.2(a). In addition, these regulations provide that "in counting the number of days spent within and without this state, presence within the state for any part of a calendar day constitutes a day spent within the state." 20 NYCRR 102.2(c).

C. That petitioner was not domiciled in New York, but maintained a permanent place of abode in New York and spent in the aggregate more than 183 days in New York and thus is a resident of New York State for income tax purposes pursuant to section 605(a)(2) of the Tax Law and regulations thereunder.

D. That section 620(a) of the Tax Law provides that "[a] resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, ... upon income both derived therefrom and subject to tax under this article."

E. That the State of Connecticut does not impose an income tax on its resident. The tax imposed is a capital gains and dividend tax. Therefore, the tax imposed by the State of Connecticut is not an allowable resident credit within the meaning and intent of section 620(a) of the Tax Law.

G. That the petition of Sallie Melvin is denied and the Notice of Deficiency dated June 24, 1974 is sustained.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION
James E. Sullivan
PRESIDENT
Francis R. Koenig
COMMISSIONER
Mark J. [illegible]
COMMISSIONER