

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Catherine Alongi
and Domenick Alongi (deceased)

:

:

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 :
Years 1972 - 1975.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Catherine Alongi and Domenick Alongi (deceased) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Catherine Alongi
and Domenick Alongi (deceased)
8 Morton St.
New York, NY 10014

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
29th day of January, 1982.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Catherine Alongi :
and Domenick Alongi (deceased) :

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:
Years 1972 - 1975.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon David Markowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Markowitz
225 Broadway, Rm. 500
New York, NY 10007

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
29th day of January, 1982.

Annie A. Hagelund

J. Vredenburg

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

January 29, 1982

Catherine Alongi
and Domenick Alongi (deceased)
8 Morton St.
New York, NY 10014

Dear Mrs. Alongi:

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
David Markowitz
225 Broadway, Rm. 500
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
DOMENICK AND CATHERINE ALONGI	:	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 Years 1972 through 1975.	:	

Petitioners, Domenick and Catherine Alongi, 8 Morton Street, New York, New York 10014, 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 and a separate, similar petition for the years 1973, 1974 and 1975. Since there had been no determination of the deficiency of personal income tax for 1974 while there had been a determination of deficiency of unincorporated business tax for that year, the latter petition was treated as seeking a redetermination of a deficiency of unincorporated business tax under Article 23 of the Tax Law for the year 1974 (File Nos. 17586 and 24566).

A formal hearing was held before Stanley Buchsbaum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 20, 1980 at 10:55 A.M. and on January 26, 1981 at 2:45 P.M. Petitioners appeared by David Markowitz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron and Irwin Levy, Esqs., of counsel).

ISSUE

Whether petitioners were "resident individuals" of New York State during the years 1972 through 1975, within the meaning and intent of section 605(a) of the Tax Law.

FINDINGS OF FACT

1. The petitioners did not file New York income tax returns for 1972, 1973 and 1975. They did file a New York State Resident Return for 1974.

2. a. On November 22, 1976, the Audit Division issued a Notice of Deficiency against petitioners for the year 1972 for \$3,975.26 in income tax, \$1,768.99 in penalties (under sub-sections (a)1 and (a)2 of section 685 of the Tax Law) and \$1,074.95 in interest, for a total of \$6,819.20. The deficiency was based on information obtained from the Internal Revenue Service, after petitioners failed to respond to two letters from the Audit Division.

b. On July 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners for the year 1975 for \$6,585.63 in income tax, plus \$3,855.02 in penalties (under sub-sections (a)2, (a)2 and (c) of section 685 of the Tax Law) and interest, for a total of \$10,440.65. The deficiency was estimated since records did not indicate that a New York return was filed by petitioners.

c. On July 10, 1978, the Audit Division also issued a Notice of Deficiency against petitioner Domenick Alongi for \$2,750.00 in unincorporated business tax, plus \$1,609.77 in penalty and interest, for a total due of \$4,359.77. The deficiency was asserted on the grounds that since information requested in two letters was not submitted, business income was considered subject to unincorporated business tax.

d. On November 13, 1978, the Audit Division issued a Notice of Deficiency against petitioners for 1973 and 1974 in the amount of \$3,425.00 in income tax for 1973 and \$3,163.25 in penalties for 1973 and 1974 (under sub-sections (a)1, (a)2 and (c) of section 685 of the Tax Law) and interest, for a total of \$6,588.25. The deficiency for 1973 was estimated since records did not indicate that a New York return was filed by petitioners.

e. On November 13, 1978, the Audit Division also issued a Notice of Deficiency against petitioner Domenick Alongi for 1973 and 1974 in the amount of \$3,575.00 in unincorporated business tax, plus penalty and interest of \$2,978.08, for a total of \$6,553.09. The Deficiency was asserted on the grounds that information requested in two letters was not submitted, thus business income was deemed subject to unincorporated business tax.

3. At the first hearing the amounts of the deficiencies were adjusted pursuant to section 689(d)(1) of the Tax Law, as follows:

<u>Year</u>	<u>Income Tax</u>	<u>UBT</u>	<u>\$685(c)</u>	<u>\$685(a)(1) and (2)</u>
1972	\$1,982.87	\$1,919.50 ¹	\$155.68	\$1,853.63
1973	3,024.61	2,249.50	210.40	2,505.20
1974	-0-	1,919.50	86.79	911.76
1975	3,601.49	2,519.00	276.73	2,815.43

These amounts do not include the interest due. The adjustments were made on the basis of federal returns submitted after audit.

4. Petitioner Domenick Alongi testified on direct examination at the first hearing, but his direct examination was not completed, and there was no cross-examination. Petitioner Catherine Alongi testified at the second and final hearing.

5. Mr. Alongi testified that he had two race horses in Florida. He raced one at Hialeah on March 27, 1972. He produced documentary evidence to establish this and a letterhead of "El Dorado Farms" which recited "Conditioning and Racing Thoroughbreds" and "Breeding-Boarding-Training". He said the letterhead was that of the place where he kept the horses.

1. The assertion of a greater deficiency in Unincorporated Business Tax for 1972 is not proper under Section 689(d)(1) of the Tax Law as no deficiency was issued for unincorporated business tax for 1972. Accordingly the decision rendered in this matter will not address this item.

6. Mr. Alongi testified that he had no earnings in New York in 1972 and that his income was earned in Florida at the racetrack. There was no testimony concerning how he earned the money at the racetrack. Nor was there any testimony concerning the nature or source of earnings during any year prior or subsequent to 1972.

7. Mr. Alongi testified that his children went to school in Florida in 1971, 1972 and part of 1973. This was supported by report cards for the first period of 1971-1972 for one child and for the first three periods of the six periods of 1971-1972 for the other.

8. Mr. Alongi testified that he owned a house in Miramar, Florida, for sometime up to 1969. In 1969 he owned a home in North Miami, Florida, which he sold in 1971. In that year he bought another home in North Miami, for \$137,000, which he sold in May, 1973. The testimony concerning the last home was supported by various bills relating to it and the deed of sale in May, 1973. Mr. Alongi did not testify with regard to where he lived between May and November, 1973, although he agreed when his attorney stated that he sold the house in November, 1973, in contradiction of his own earlier testimony and the deed in evidence. He then testified that in November, 1973, he moved in with a friend of his in the latter's condominium apartment and lived there until 1975, when he purchased a condominium in the same building. He asserted that he was still living in that condominium and submitted an indenture of sale to him dated December 15, 1975.

9. At the first hearing, the petitioners submitted an affidavit of Vincent Guidice which stated that Mr. Alongi had resided with him in his apartment in Miami, Florida, from November, 1973 to December, 1975. At the second hearing, Mr. Guidice, when asked how long Mr. Alongi had lived with him,

said "Oh, on and off about nine months in that one particular year, '74." He also testified that, whenever he visited New York, he would visit the Alongis at their home on Morton Street.

10. Mr. Alongi testified that he suffered a heart attack in Miami on April 19, 1971, and was hospitalized there for 15 days.

11. Mr. Alongi bought two cars in Miami in December, 1971. For one, the total price was about \$7,600.00 and for the other, it was about \$6,600.00.

12. Mr. Alongi died on March 30, 1980. Mr. Guidice testified that the death occurred in a hospital, but that for a day or two before his death Mr. Alongi had been living in a hotel with his entire family. His only explanation for their staying at the hotel despite their ownership of the condominium apartment was that they were on a vacation.

13. Mrs. Alongi testified at the second hearing. She evidenced a lack of memory which is not believable. She could not remember whether her husband had a boat in Florida although, after his death, a boat jointly owned by her and her husband was sold. She could not remember when they bought their Briarcliff Manor home or, except for 1972, when she lived there or when they sold it. She could not remember where she lived after they sold a home at which they had lived in Brooklyn or when they lived at a home which they had owned in Teaneck, New Jersey, except that they had moved from that home to Florida. She did not know whether her husband ever owned horses in New York. She did not remember whether she had any joint bank accounts with her husband. She did not know when they moved back to New York from Florida, but she thought that it might have been when they bought a house on Morton Street. Although she said her husband worked in Florida, she did not know when he left home to go to work. She did not know how long she had remained at Briarcliff Manor when she came

up from Florida with her mother-in-law. She said that at various times her husband left her to stay with Mr. Guidice for a day or two and sometimes for six months. Yet she did not remember whether she came back to New York during the six-month periods.

14. Her lack of knowledge was equally incredible. She did not know whether her husband ever had any business of any kind in New York. She knew that he was involved in upholstery when they married, but she did not know what business her husband was engaged in while in Florida.

15. The petitioners owned homes in New York continuously from a time about six months after their marriage in 1958 until Mr. Alongi's death, and Mrs. Alongi continued ownership of the home they had at that time. Mrs. Alongi admitted that in 1972 or 1973 she did not accompany her husband to Florida, remaining in New York with her mother-in-law, who refused to go to Florida. She also came back to New York to take care of her mother-in-law. When her husband moved in with Mr. Guidice for a lengthy period she and her children went back to Briarcliff Manor, and her children went to school there.

16. The United States Income Tax returns filed by petitioners for 1972 and 1973 gave their address as Briarcliff Manor, New York. Their federal returns for 1974 and 1975 gave their address as 8 Morton Street, New York, New York.

CONCLUSIONS OF LAW

A. That petitioners were domiciled in New York before they bought a house in Florida and did not show by credible proof an intent to change their place of domicile to Florida.

B. That since during the years at issue, petitioners were domiciled in New York and maintained a permanent place of abode in New York State (i.e., in

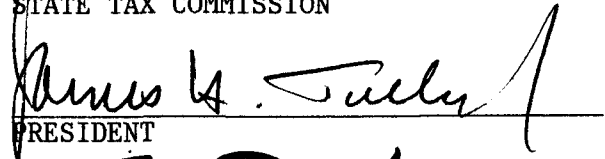
Briarcliff Manor, New York and at 8 Morton Street, New York, New York) they were resident individuals of New York under section 605(a)1 of the Tax Law.

C. That the petitions of Domenick and Catherine Alongi are denied, and the deficiencies against them for income tax and against Domenick Alongi for unincorporated business tax, as properly modified in the manner indicated in Finding of Fact 3 hereof, are sustained, together with interest thereon.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER