

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Stanley G. & Cheryl Dragoti

:

: 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 :
1971.

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 Stanley G. & Cheryl Dragoti, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley G. & Cheryl Dragoti
1303 Park Way
Beverly Hills, CA 90210

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.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley G. & Cheryl Dragoti : 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 :
1971.

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 Sanford Goldstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanford Goldstein
Sanford Goldstein & Co.
60 E. 42nd St.
New York, NY 10017

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.

Ann M. O'Hopelund

J. Vredenburg

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

January 29, 1982

Stanley G. & Cheryl Dragoti
1303 Park Way
Beverly Hills, CA 90210

Dear Mr. & Mrs. Dragoti:

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
Sanford Goldstein
Sanford Goldstein & Co.
60 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY G. DRAGOTI and CHERYL DRAGOTI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1971.	:	

Petitioners, Stanley G. Dragoti and Cheryl Dragoti, 1303 Park Way, Beverly Hills, California 90210, 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 1971 (File No. 13153).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 20, 1980 at 1:15 P.M. Petitioners appeared by Sanford Goldstein & Co. (Sanford Goldstein, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners were resident individuals of New York State.

FINDINGS OF FACT

1. On February 24, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners, Stanley G. and Cheryl Dragoti, asserting a deficiency of \$10,352.86, plus interest, for the year 1971. The Notice of Deficiency was issued after petitioners failed to submit information requested by the Bureau. At the formal hearing, the Audit Division, pursuant to section 689(d)(1) of the Tax Law, claimed a greater deficiency than that asserted in the Notice of Deficiency. The claim was based on petitioners' Federal income tax return for

1971, which was not presented to the Income Tax Bureau until after the original Statement of Audit Changes had been issued. During the hearing the Audit Division introduced into evidence a schedule (Exhibit "J") showing New York income and deductions based on petitioners' 1971 Federal income tax return. Said schedule showed New York tax due from Stanley Dragoti in the amount of \$16,148.00 and from Cheryl Dragoti in the amount of \$880.00. Petitioners' New York State income tax nonresident return for 1971 showed that Stanley Dragoti worked no days in New York State out of a total number of working days in the year of 255.

2. In November, 1970, Mr. Dragoti was asked by his employer, Wells, Rich, Greene, Inc., to relocate to California to organize and run WRG/Dragoti, Ltd., an affiliated company which produced commercials on the West Coast for the firm's clients.

3. In November, 1970, petitioners moved to California, taking with them their clothing, jewelry and personal effects. Petitioners leased their condominium apartment at 215 East 79th Street in New York City beginning in December of 1970. The one year lease was subsequently renewed. The apartment, which petitioners had purchased in 1967, was rented out on a furnished basis.

4. From November, 1970, to January 9, 1971, petitioners lived in the Beverly Hills Hotel in Beverly Hills, California. Pursuant to a lease dated February 12, 1971, petitioners moved into a house at 1303 Park Way in Beverly Hills, California, for a one year term commencing on January 9, 1971. Petitioners occupied these premises from January 9, 1971 through the balance of 1971. The lessee was not petitioners, but Jack Warner & Wells, Rich, Greene-Dragoti Productions, which leased the premises on petitioners' behalf. The leased

premises were rented unfurnished. All payments under the lease were made by Jack Warner & Wells, Rich, Greene-Dragoti Productions.

5. Petitioners filed California resident income tax returns for the years 1971 and 1972. Petitioners also registered their automobiles in California in 1970 and had a will drawn while residing in said State.

6. Petitioners did not file their 1970 New York State resident income tax return until late 1971. The return, which was executed by petitioners on September 1, 1971, and prepared by New York accountants, gave as petitioners' home address the address of their condominium apartment.

7. Petitioner Stanley Dragoti returned to New York State for 20 days during 1971 on business trips in connection with his work at the New York based headquarters office of Wells, Rich, Greene, Inc. On these trips he would stay at hotels in New York.

8. Petitioner Cheryl Dragoti received wage income of \$17,213.46 from which New York State income taxes were withheld from various companies during 1971. She did not submit any documentary evidence as to the nature of these payments nor did she indicate where her services were rendered.

9. Petitioners, Stanley Dragoti and Cheryl Dragoti spent less than 183 days in New York State during 1971.

CONCLUSIONS OF LAW

A. That petitioners Stanley Dragoti and Cheryl Dragoti sustained their burden of proof imposed by section 689(e) of the Tax Law in establishing that they changed their domicile to California prior to 1971. Therefore, since petitioners were not domiciliaries of New York State and spent less than 183 days in this State during 1971, they are nonresidents within the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(d).

B. That since petitioner Stanley Dragoti spent twenty days in this State on business during 1971 he is required to allocate his salary on the basis of a ratio, the numerator of which is the number of days employed within the State and the denominator of which is total number of working days employed both within and without the State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

C. That petitioner Cheryl Dragoti failed to sustain the burden of proof imposed by section 689(e) of the Tax Law in establishing that wages and/or residuals she received were derived from sources outside this State. Therefore, she is required to report, as New York source income, the amount of \$17,213.46.

D. That the petition of Stanley G. Dragoti and Cheryl Dragoti is granted to the extent shown in Conclusion of Law "A" supra; that the Audit Division is directed to modify the Notice of Deficiency on the basis of Conclusions of Law "B" and "C" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Stanley G. & Cheryl Dragoti
1303 Park Way
Beverly Hills, CA 90210



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1971.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Stanley G. & Cheryl Dragoti, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley G. & Cheryl Dragoti
Executive Business Management, Inc.
132 South Rodeo Dr.
Beverly Hills, CA 90201

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
26th day of March, 1982.



