

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Rift Fournier	:	
and Jean Fournier	:	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	:	
1975.	:	

State of New York
County of Albany

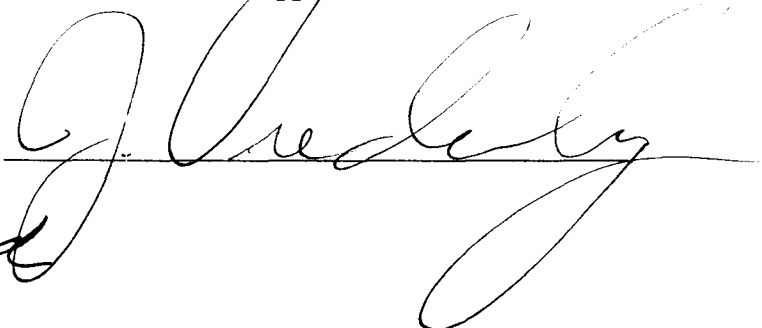
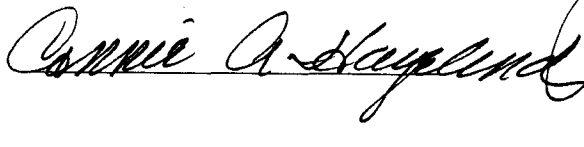
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Rift Fournier, and Jean Fournier the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rift Fournier
and Jean Fournier
c/o Edward Greenberg
274 Madison Ave.
New York, NY 10016

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
11th day of June, 1982.

STATE OF NEW YORK

STATE TAX COMMISSION

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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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Edward Greenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Greenberg
274 Madison Ave.
New York, NY 10016

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
11th day of June, 1982.

Carrie A. Haylund

J. Vredenburg

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

June 11, 1982

Rift Fournier
and Jean Fournier
c/o Edward Greenberg
274 Madison Ave.
New York, NY 10016

Dear Mr. & Mrs. Fournier:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Edward Greenberg
274 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RIFT FOURNIER AND JEAN FOURNIER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1975.

DECISION

Petitioners, Rift Fournier and Jean Fournier, c/o Edward Greenberg, 274 Madison Avenue, New York, New York 10016, 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 1975 (File No. 24089).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 14, 1981 at 1:15 P.M. Petitioners appeared by Edward Greenberg, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioners, Rift Fournier and Jean Fournier, were residents of New York State for the year 1975.

II. Whether petitioners' failure to file a New York State income tax return was due to reasonable cause.

FINDINGS OF FACT

1. On August 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners, Rift Fournier and Jean Fournier, asserting personal income tax of \$2,165.31, plus penalties under sections 685(a)(1) and (a)(2) and interest, for a total due of \$3,350.27.

2. The Notice of Deficiency was based on an explanatory Statement of Audit Changes which was issued on May 2, 1978 because of petitioners' failure to reply to correspondence previously initiated by the Audit Division and the fact that petitioners failed to file a 1975 New York tax return. The statement held that petitioners' total New York income was the same as federal adjusted gross income reported on petitioners' 1975 jointly filed federal income tax return.

3. On May 27, 1975 petitioner Jean Fournier, residing at 17 Domineque Lane, Simsbury, Connecticut, leased for a period of three years a dwelling located at 147 Great Pond Road, Simsbury, Connecticut. Said lease commenced on June 15, 1975. Her former address was the address shown on petitioners' 1975 federal income tax return filed. Petitioner Jean Fournier resided in Connecticut with her children all of 1975.

4. During the year in issue, petitioner Jean Fournier was employed full-time by the Hopmeadow Animal Hospital, located in Simsbury, Connecticut. She performed no services within New York State for said employer.

5. Petitioner Rift Fournier occupied an apartment in New York City at 400 East 56th Street which also functioned as his New York office. He was also listed in the New York City telephone directory at said address. Mr. Fournier lived both in Connecticut and New Jersey during the year at issue and now resides in California.

6. Petitioner Rift Fournier worked in the television industry. The performance of his varied duties required that he work both within and without New York State. No evidence was submitted at the hearing held herein as to the number of days worked in New York State as compared to the total number of days worked both within and without New York State.

7. Petitioners, now divorced, were previously separated, although their representative did not acknowledge whether or not such conditions existed prior to or during the year at issue.

8. Petitioners' representative indicated that a New York nonresident income tax return should have been filed, that had he known all the facts he would have prepared said return for petitioners, and that accordingly, if any penalties are due, such should be computed based on the nonresident income.

CONCLUSIONS OF LAW

A. That petitioner Jean Fournier was not a resident of New York State during 1975 within the meaning and intent of section 605 of the Tax Law.

B. That petitioner Rift Fournier was a resident of New York State during 1975 as defined in section 605(a)(2) of the Tax Law. Petitioner Rift Fournier maintained a permanent place of abode within New York State and he failed to sustain his burden of proof pursuant to section 689(e) of the Tax Law to show that he did not spend in the aggregate more than 183 days of the taxable year in this state.

C. That reasonable cause for failure to file a New York State income tax return has not been established. Accordingly, the imposition of penalties is sustained.

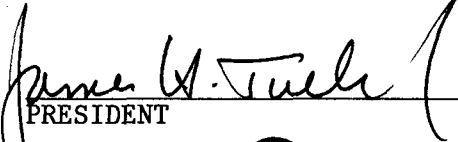
D. That the Audit Division is instructed to modify the Notice of Deficiency dated August 10, 1978 by removing petitioner Jean Fournier's name therefrom. That the deficiency relates entirely to petitioner Rift Fournier and is to be recomputed in accordance with section 611(b)(3) of the Tax Law based on a New York adjusted gross income of \$23,000.00. That except as so granted, the


Notice of Deficiency dated August 10, 1978 is otherwise sustained, together with such penalties and interest as may be lawfully due and owing.


DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER