

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
David C. & Candace P. Hamilton

:

:

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 :
1974.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April 9, 1982, 1982, she served the within notice of Decision by certified mail upon David C. & Candace P. Hamilton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David C. & Candace P. Hamilton
53 Seaview Avenue
North Port, NY 11768

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
9th day of April 9, 1982, 1982.

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

April 9, 1982

David C. & Candace P. Hamilton
53 Seaview Avenue
North Port, NY 11768

Dear Mr. & Mrs. Hamilton:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID C. HAMILTON AND CANDACE P. HAMILTON

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1974.

Petitioners, David C. Hamilton and Candace P. Hamilton, 53 Seaview Avenue, North Port, New York 11768, 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 1974 (File No. 24483).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 7, 1981 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioners incurred a change of residence from New York State to San Francisco, California during the tax year 1974.

II. Whether petitioners failure to timely file a 1974 New York State income tax return and pay the tax when due was based on reasonable cause, and not willful neglect, thereby permitting the penalties imposed pursuant to subsections (a)(1) and (a)(2) of section 685 of the Tax Law to be waived.

FINDINGS OF FACT

1. By letters dated March 21, 1977 and June 21, 1977 the Audit Division advised petitioners that it had been unable to locate their 1974 New York

State income tax return and consequently requested that if petitioners had indeed filed a return, that certain information concerning said return be furnished. Petitioners did not reply to the letter dated March 21, 1977; while a reply to the second letter was not made until April 5, 1978.

2. On December 9, 1977 the Audit Division issued a Statement of Audit Changes to petitioners proposing that personal income tax of \$1,201.57 was due together with penalties (for failure to file a return on time and failure to pay the tax when due) and interest. The explanation contained in the Statement of Audit Changes is as follows:

"Since you failed to reply to our two previous letters, your 1974 Personal Income Tax Liability has been computed from information obtained from the Internal Revenue Service..."

Accordingly, a statutory Notice of Deficiency was issued to petitioners on August 10, 1978 imposing additional tax due of \$1,201.57 based on a total income figure of \$22,887.00 less allowance of the maximum \$2,000.00 standard deduction and four exemptions totaling \$2,600.00.

3. On April 5, 1978 the Audit Division received the 1974 New York State Combined Income Tax Return of petitioners David C. Hamilton and Candace P. Hamilton. On said return petitioners indicated their period of New York residence as being from January 1, 1974 to March 31, 1974 and December 1, 1974 to December 31, 1974. Total New York income reported by petitioner David C. Hamilton amounted to \$6,141.00; while total New York income shown for petitioner Candace P. Hamilton was \$2,569.00. In the computation of David C. Hamilton's total New York income there was included in income a New York City refund of \$12.00 and a subtraction of \$789.00, representing one-half of the deductible moving expenses incurred in a move from San Francisco, California back to Huntington, New York.

4. From January 1, 1974, to March 25, 1974 petitioner David C. Hamilton was employed by Newsday, a Long Island daily newspaper. He voluntarily tendered his resignation with Newsday effective March 25, 1974 in order to accept a permanent position with Rolling Stone magazine in San Francisco, California. Petitioner David C. Hamilton left New York State in late March or early April of 1974 and moved to San Francisco, California. Petitioner Candace P. Hamilton remained in New York State until mid June, 1974, so as to allow their two school aged children the opportunity to finish out the 1973/1974 school year in New York.

5. From January 1, 1974 to mid June, 1974 petitioners rented a two bedroom house at 10 McKenzie Street, Huntington, New York. Said house was leased on a yearly basis and when Mrs. Hamilton and the two children moved out in June, 1974 they broke the lease and forfeited the security deposit. On June 1, 1974 petitioners leased a three bedroom apartment at 2932 Fulton Street, San Francisco, California. Said lease was for the term of one year.

6. All of petitioners' personal belongings were moved from New York State to California in June, 1974 at Rolling Stone's expense. Petitioners closed out a New York savings account and opened a savings account in California. Petitioners' children were enrolled in and attended the San Francisco public school system. Petitioner Candace P. Hamilton became involved in volunteer work for the California Academy of Sciences Museum.

7. After working for Rolling Stone magazine for several months, petitioner David C. Hamilton became disenchanted with the owner of the magazine. He also had problems with the working conditions and ethics of the magazine. Accordingly, he began actively searching for other employment in Los Angeles and Boston.

8. The former employer, Newsday, upon learning of Mr. Hamilton's search for a new job, met with petitioner and was able to rehire him for employment at Newsday, however, petitioner had forfeited all pension and seniority rights from his prior tenure at Newsday. Petitioner David C. Hamilton's second period of employment with Newsday began on January 6, 1975.

9. Petitioners left San Francisco in late November or early December, 1974 and on December 15, 1974 entered into a lease whereby they rented a house located at 25 Maple Hill Road, Huntington, New York. The expense of moving their belongings from San Francisco to New York was borne solely by petitioners.

10. The New York State income tax return filed by petitioners on April 5, 1978 claimed New York itemized deductions of \$1,057.00, said amount computed by multiplying total Federal itemized deductions of \$2,732.00 by 38.677 percent. State and local income taxes of \$923.00 were included in total Federal itemized deductions. Petitioners did not submit a breakdown of those itemized deductions attributable to their periods of residence and nonresidence. Petitioners also claimed four personal exemptions with the dollar amount of said exemptions computed by multiplying \$2,600.00 by 38.677 percent. New York State tax of \$477.04 was withheld from petitioners wages earned within New York.

CONCLUSIONS OF LAW

A. That petitioners have sustained the burden of proof to show that it was their bona fide intent to definitely and finally abandon their New York home on April 1, 1974 and to establish a new fixed and permanent home in San Francisco, California. That petitioners subsequently reacquired a New York State domicile upon their return to this State on December 1, 1974. Accordingly, petitioners are taxable as resident individuals from January 1, 1974 to March

31, 1974 and December 1, 1974 to December 31, 1974 and are taxable as nonresidents for the remaining portion of said year.

B. That total New York income of \$6,141.00 reported by petitioner David C. Hamilton incorrectly included a New York City refund of \$12.00 [Tax Law section 612(c)(7)] and incorrectly claimed only one-half of the \$1,578.00 moving expense adjustment (said expenses are connected with employment within New York). Accordingly, the total New York income figure for David C. Hamilton is decreased from a reported \$6,141.00 to \$5,340.00 (\$6,141.00-12.00-789.00). That New York income for petitioner Candace P. Hamilton is correctly reported at \$2,569.00.

C. That 20 NYCRR 148.20 provides for the proration of personal exemptions based on the number of months a taxpayer is a resident individual over the total months in the year. Accordingly, petitioners are allowed to claim personal exemptions prorated on a four-twelfths basis.

D. That petitioners have failed to submit a breakdown of the itemized deductions attributable to the resident and nonresident periods and, therefore, are not entitled to claim said deductions. However, it should be noted that when state and local income taxes of \$923.00 are subtracted from total Federal itemized deductions, as required by section 615(c)(1) of the Tax Law, that the resultant New York itemized deductions subject to apportionment [\$1,820.00 (\$2,732.00-\$912.00)] is less than the allowable standard deduction subject to apportionment. Accordingly, petitioners are allowed to claim the standard deduction prorated on a four-twelfths basis.

E. That petitioners are entitled to a credit of \$477.04 for New York State tax withheld from wages.

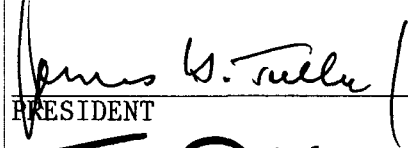
F. That the issue of late filing and late payment penalties is rendered moot in that the above conclusions will result in an overpayment.


G. That the Notice of Deficiency dated August 10, 1978 is cancelled in full; that the Audit Division is directed to recompute petitioners' liability in accordance with the conclusions rendered herein and refund to petitioners the resultant overpayment.

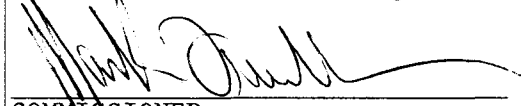
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER