

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ricardo V. & Freda W. Oasin :

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

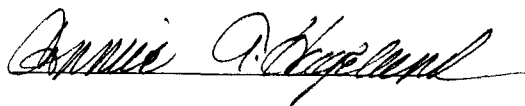
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Ricardo V. & Freda W. Oasin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

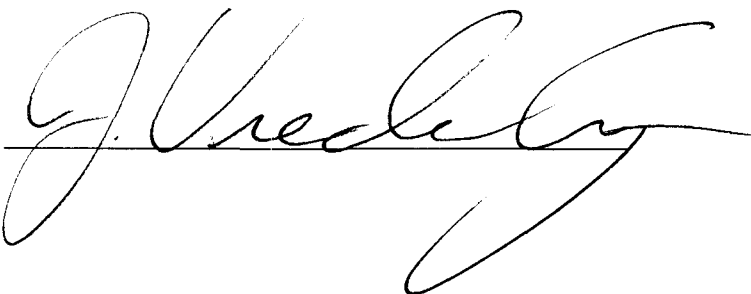
Ricardo V. & Freda W. Oasin
10 Tucker Court
Willingboro, NJ 08046

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
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ricardo V. & Freda W. Oasin :

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Tax under Article 22 of the Tax Law for the Year :
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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Manuel B. Oasin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

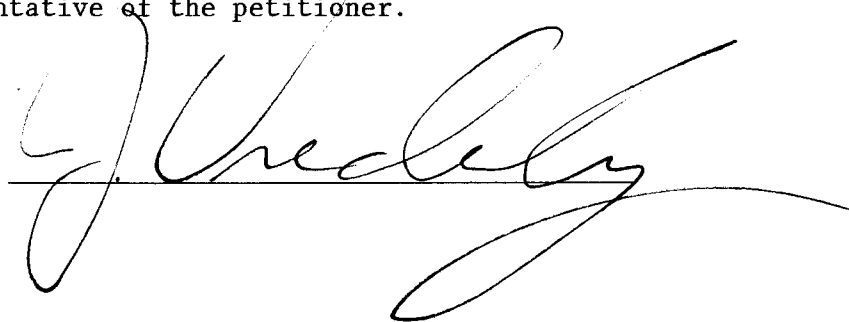
Manuel B. Oasin
1518 Baird Ave.
Camden, NJ

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
4th day of August, 1982.





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

August 4, 1982

Ricardo V. & Freda W. Oasin
10 Tucker Court
Willingboro, NJ 08046

Dear Mr. & Mrs. Oasin:

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
Manuel B. Oasin
1518 Baird Ave.
Camden, NJ
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICARDO V. OASIN and FRED A W. OASIN	:	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, Ricardo V. Oasin and Freda W. Oasin, 10 Tucker Court, Willingboro, New Jersey 08046, 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. 13607).

On June 12, 1979, petitioners Ricardo V. Oasin and Freda W. Oasin and petitioners' representative, Manuel B. Oasin, Esq., advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether the Income Tax Bureau properly disallowed the petitioners' moving expenses on the grounds that such expenses were incidental to employment outside New York.

FINDINGS OF FACT

1. Petitioners, Ricardo V. Oasin and Freda W. Oasin, timely filed a New York State Personal Income Tax Resident Return for 1971 in which they indicated their period of New York State residence was January 1, 1971 to November 18, 1971. On this return, the petitioners reported wages of \$36,280.04, moving expenses of \$908.39 and New York itemized deductions of \$5,595.72.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1971, asserting personal income tax of \$727.95, plus interest of \$84.91, for a total of \$812.86. The notice was issued on the following grounds:

- (a) Since moving expenses were incident to employment outside New York State, they are not an allowable deduction on petitioners' New York State income tax return.
- (b) That wages and New York itemized deductions were corrected to reflect the amounts reported by petitioners in a Change of Resident Status Questionnaire (IT-2106).
- (c) All State and local income taxes must be subtracted from itemized deductions to arrive at New York itemized deduction.
- (d) Proration of exemptions and statutory credit is required when a return is filed for less than 12 months.

The petitioners do not dispute the adjustments made by the Income Tax Bureau other than the disallowance of the moving expenses.

3. Petitioners contended that section 654(c) of the Tax Law requires a taxpayer to accrue any items of income, gain, loss or deduction accruing prior to the change of status.

Petitioners further contended that sections 612 and 615 of the Tax Law, the modifications referred to in section 654(c) of the Tax Law, are devoid of any language which directly or indirectly relates to moving expenses. Therefore, under the plain language of the statute, a taxpayer can deduct on an accruable basis moving expense incurred prior to a change to nonresident status.

4. Petitioners also contended that Letter of Counsel, Department of Taxation and Finance, November 1, 1965 (¶18-345.40 New York Tax Rep (CCH) 2237-3) violates the provisions of section 654(c) of the Tax Law in that the Letter of Counsel forces the taxpayer to remain on a cash basis pursuant to moving expenses.

CONCLUSIONS OF LAW

A. That section 654(c)(1) of the Tax Law, provides that:

"If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for New York income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections six hundred twelve and six hundred fifteen as if such accrued items were includible or allowable for federal income tax purposes."

B. That the Letter of Counsel, Department of Taxation and Finance, November 1, 1965 states in part:

"Where the taxpayer changes his status during the taxable year from resident to nonresident, the deduction for moving expenses incident to employment outside New York in the nonresident period may not be claimed on the taxpayer's resident return unless the taxpayer can substantiate payment prior to the date of the change of residence. In the event that a nonresident return is required to be filed by the taxpayer as a result of a change of residence and payment of moving expenses prior to the change of residence cannot be substantiated, then the moving expenses must be deducted on the taxpayer's nonresident return."

C. That the disallowance by the Income Tax Bureau of petitioners' moving expenses on the grounds that such expenses were incidental to employment outside New York State is not in accordance with the meaning and intent of section 654(c)(1) of the Tax Law. Accordingly, the Audit Division is directed to modify the Notice of Deficiency by eliminating the adjustment made to the moving expense deduction.

D. That the petition of Ricardo V. Oasin and Freda W. Oasin is granted to the extent indicated in Conclusion of Law "C" and is in all other respects

denied. The Notice of Deficiency as modified is sustained together with such interest as may be due and owing.

DATED: Albany, New York

STATE TAX COMMISSION


AUG 04 1982



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER