

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Stanley M. Ruszkowski, Jr.	:	
and Karen K. Ruszkowski	:	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	:	
1977.	:	

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 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Stanley M. Ruszkowski, Jr. and Karen K. Ruszkowski, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

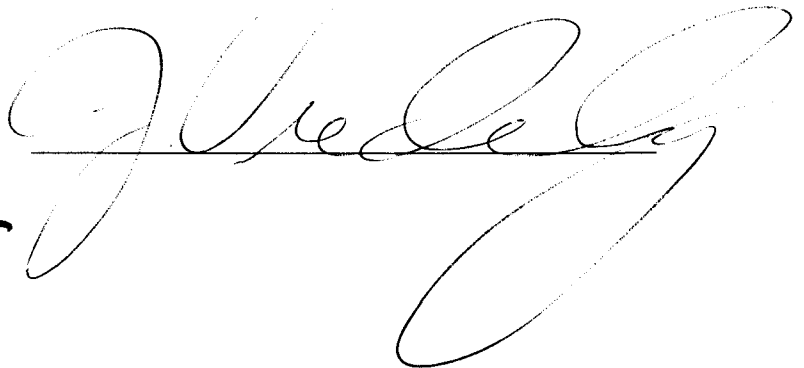
Stanley M. Ruszkowski, Jr.
and Karen K. Ruszkowski
5233 McCarter Station
Stone Mountain, GA 30088

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
22nd day of October, 1982.


Dennis A. Chalant
QUALIFIED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 22, 1982

Stanley M. Ruszkowski, Jr.
and Karen K. Ruszkowski
5233 McCarter Station
Stone Mountain, GA 30088

Dear Mr. & Mrs. Ruszkowski:

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	:	
STANLEY M. RUSZKOWSKI JR.	:	
AND	:	DECISION
KAREN K. RUSZKOWSKI	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax Under Article	:	
22 of the Tax Law for the Year 1977.	:	

Petitioners, Stanley M. Ruszkowski Jr. and Karen K. Ruszkowski, 5233 McCarter Station, Stone Mountain, Georgia 30088, 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 1977 (File No. 26773).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 3, 1981 at 9:30 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Samuel Freund, Esq., of counsel).

ISSUES

- I. Whether a petition to contest a deficiency asserted by the Audit Division was timely filed by Stanley M. Ruszkowski Jr. and Karen K. Ruszkowski.
- II. Whether, in the event a timely petition was filed, petitioners were resident individuals of New York State during the year 1977.
- III. Whether New York State lottery winnings are includable in the New York adjusted gross income of a resident individual.

FINDINGS OF FACT

1. On September 20, 1978, a jointly filed New York State Income Tax Nonresident Return for the year 1977 was received by the Audit Division from petitioners, Stanley M. Ruszkowski Jr. and Karen K. Ruszkowski, husband and wife. This return was signed but not dated by the petitioners. Attached to this return was a Schedule for Change of Resident Status (Form CR-60.1) on which petitioners reported they were residents of New York State from January 1, 1977 through June 1, 1977, and were nonresidents for the remainder of 1977.

2. On April 6, 1979 the Audit Division issued to petitioners a Notice of Deficiency asserting additional tax due of \$1,419.42 for the year 1977 plus penalty and interest. A Statement of Audit Changes dated March 5, 1979 explained the above asserted deficiency was based on a recomputation of petitioners' 1977 tax liability to reflect the inclusion in New York income of New York State lottery winnings totaling \$20,000.00. In addition, the penalty was asserted for failure to file a timely return pursuant to section 685(a)(1) of the Tax Law.

3. Petitioner Stanley M. Ruszkowski, a native of New York State, lived at Vestal Plaza Apartments, No. 1-8, Binghamton, New York during the period January 1, 1977 through May 22, 1977. Mr. Ruszkowski was then a graduate student at the State University of New York in Binghamton, New York where he was studying for a Masters Degree in accounting. During this period, Mr. Ruszkowski was also actively engaged in the process of seeking employment to commence upon completion of his studies.

4. On March 16, 1977, Mr. Ruszkowski received an offer of employment with the Atlanta, Georgia accounting firm of Bickman, Libby, Thomas and Braxton

("Bickman, Libby"). Mr. Ruszkowski could commence his employment with Bickman, Libby at any time on or before June 15, 1977, but no later than that date.¹

5. Mr. Ruszkowski accepted this offer of employment, signed an employment agreement in March, 1977 and indicated to Bickman, Libby that he would commence working on June 13, 1977.

6. Mr. Ruszkowski graduated on May 22, 1977 and moved out of his Binghamton apartment. On May 23, 1977, he received a check in the amount of \$16,000.00 as a winner in the New York State lottery drawing held May 23, 1977 at the Uris Theatre in New York City.²

7. Mr. Ruszkowski remained in New York State through June 5, 1977, visiting his parents in Long Island and his future wife in Buffalo. He left New York State on June 5, 1977, arrived in Georgia on June 8, 1977, and soon thereafter rented an apartment in Georgia. He has resided in Georgia since June 8, 1977 and has been continuously employed there by Bickman, Libby since commencing work with that firm on June 13, 1977.

8. In September, 1977, Mr. Ruszkowski returned to New York State and married petitioner Karen K. Ruszkowski. Petitioner Karen K. Ruszkowski returned to Georgia with her husband and has since resided there.

9. Petitioners filed a "perfected petition" in this matter which was received on April 3, 1981 by the Tax Appeals Bureau. There was no document entitled "petition" introduced into evidence at the hearing or otherwise

¹ Completion of Mr. Ruszkowski's Masters Degree was not required in order for him to commence work as an accountant, since he had previously received a Bachelor of Science degree in accounting.

² The amount actually won by Mr. Ruszkowski totaled \$20,000.00. However, the Internal Revenue Service required that twenty percent (20%) of all lottery winnings in excess of \$5,000.00 be withheld for federal taxes. No such withholding was required to be made for New York State taxes.

contained in the file. However, a letter from petitioner Stanley M. Ruszkowski, Jr., mailed April 9, 1979 and received by the Audit Division on April 13, 1979, disputes the asserted deficiency at issue herein and requests a clarification of the deficiency. This letter contained information including the assessment number of the deficiency, the tax year involved, the file number, the taxpayers' (petitioners') social security numbers and the number identifying the Income Tax Section of the Audit Division involved with this audit. Also attached was a copy of the Statement of Audit Changes dated March 5, 1979. Finally, a letter from the Tax Appeals Bureau to the petitioners dated October 15, 1979 acknowledges receipt of a "petition" and notes assignment of File No. 26773 to this matter.

10. Petitioners had sought and were granted an automatic three month extension of the time within which to file their Federal income tax return and also were granted an additional extension of time such that they had until September 15, 1978 to file said return. A copy of the approved application for extension of time was attached to petitioners' Federal income tax return.

CONCLUSIONS OF LAW

A. That section 689(b) of the Tax Law in pertinent part provides:

"(b) Petition for Redetermination of a deficiency - Within ninety days, ..., after the mailing of the notice of deficiency authorized by section six hundred eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency." (emphasis as in original).

B. That Regulations of the State Tax Commission in pertinent part provide:

"The term petition shall include an "application", "petition", "demand for hearing" or variation of such terms as used in the applicable statutory sections of the Tax Law. The petition, for purposes of the time limitations, may be in any form, so long as it

is in writing, identifies the action, or actions, which are protested and indicates that revision of the action, or actions, is desired." (20 NYCRR 601.1(c); emphasis as in original).

Furthermore, "[a]ll proceedings before the commission must be commenced by the filing of a petition with the operating bureau involved with the controversy. The petition should contain sufficient detail to indicate the action or actions of the operating bureau which are being protested."... (20 NYCRR 601.3(a)).

C. That the letter of petitioner Stanley M. Ruszkowski Jr., mailed April 9, 1979 and received by the Audit Division on April 13, 1979 (See Finding of Fact "9") contained sufficient information to identify the action being protested and to indicate the desired revision of that action. Accordingly, since this letter contained sufficient requisite information and was filed with the Audit Division (the operating bureau involved with the controversy) within ninety days after the mailing of the Notice of Deficiency, such letter shall be deemed a timely petition within the meaning and intent of section 689(b) of the Tax Law and regulations thereunder.

D. That section 605(a)(1) of the Tax Law provides that a resident individual means an individual "...who is domiciled in this state, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state..." (emphasis added).

Regulations of the State Tax Commission further provide:

"A domicile once established continues until the person in question moves to a new location with the intention of making his fixed and permanent home there."... (20 NYCRR 102.2(d)(2); emphasis added).

See also Bodfish v. Gallman, 50 A.D.2d 457(3d Dept., 1976).

E. That there is no evidence to indicate petitioner Stanley M. Ruszkowski Jr. was domiciled anywhere other than in New York State prior to June 8, 1977. His activities prior to that date may at best be described as preparations evidencing his intent to change domicile. However, no change of domicile could have occurred until he actually left New York State and established his fixed and permanent home in Georgia. Therefore, at least until June 8, 1977, Mr. Ruszkowski was a domiciliary of New York State and taxable as a resident individual thereof within the meaning and intent of section 605(a)(1) of the Tax Law and regulations thereunder.


F. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law. New York State lottery winnings received by petitioner Stanley M. Ruszkowski Jr. on May 23, 1977, when he was a resident of New York State, were properly included in petitioners' Federal adjusted gross income for 1977, and are not among those modifications reducing Federal adjusted gross income (and hence reducing New York adjusted gross income of a resident individual) specified by section 612(c) of the Tax Law. Accordingly, said lottery winnings should have been included in petitioners' New York adjusted gross income for 1977.

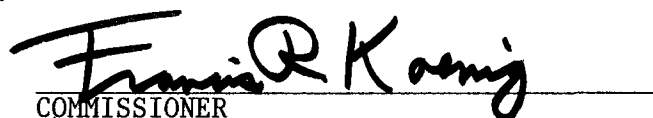
G. That since petitioners had been granted extensions of the time within which to file their income tax return (See Finding of Fact "10"), the penalty asserted under section 685(a)(1) of the Tax Law is sustained only for that period commencing with the final extended due date for petitioner's return (September 15, 1978) and ending on the date the return was filed (September 20, 1978).


H. That the petition of Stanley M. Ruszkowski Jr. and Karen K. Ruszkowski is hereby denied and the Notice of Deficiency together with such interest as may be lawfully owing and such penalty as is proper in accordance with Conclusion of Law "G" is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER