

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Rachel Grupico :
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. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Joseph & Rachel Grupico, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

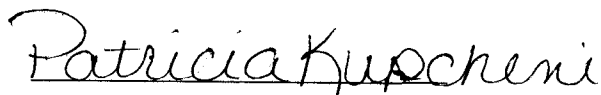
Joseph & Rachel Grupico
6851 S.W. 8th St.
Plantation, FL 33310

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
21st day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Rachel Grupico :
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Tax under Article 22 of the Tax Law for the Year :
1974. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Norman Lipman the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Lipman
Norman Lipman & Co.
1995 Linden Blvd.
Elmont, NY 11003

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
21st day of October, 1983.

Connie A. Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 21, 1983

Joseph & Rachel Grupico
6851 S.W. 8th St.
Plantation, FL 33310

Dear Mr. & Mrs. Grupico:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Norman Lipman
Norman Lipman & Co.
1995 Linden Blvd.
Elmont, NY 11003
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH GRUPICO AND RACHEL GRUPICO	:	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, Joseph Grupico and Rachel Grupico, 6851 S.W. 8th Street, Plantation, Florida 33310, 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. 30836).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1983 at 9:15 A.M. with all briefs to be submitted by March 9, 1983. Petitioner Joseph Grupico appeared by Norman Lippman. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Joseph Grupico was domiciled in, and a resident of New York State during the year 1974.

FINDINGS OF FACT

1. Joseph Grupico (hereinafter petitioner) and Rachel Grupico timely filed a joint New York State Income Tax Resident Return for the year 1974 whereon only Rachel Grupico's income was reported.

2. On August 9, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein their tax liability was recomputed using their joint Federal adjusted gross income. Said statement explained that:

"A resident of New York State must report all sources of income.

Removal from New York State for a temporary and limited period of employment does not constitute a permanent change of residence and the person retains the status he had before such employment."

Accordingly, a Notice of Deficiency was issued against petitioners on February 22, 1980 asserting additional personal income tax of \$445.64, plus interest of \$183.87, for a total due of \$629.51.

3. Petitioner contended that he was a domiciliary and resident of the State of Florida during the entire year 1974. Rachel Grupico was a resident of New York State during said year.

4. During 1972 petitioner separated from his wife, Rachel Grupico, and moved to Florida. In Florida he established a business, Florida Mar-El Co., Inc., which was involved in the manufacture and installation of davits.

5. On December 27, 1972 petitioner filed a Declaration of Domicile and Citizenship with the State of Florida wherein he stated that on November 17, 1972 he became a bona fide resident of said state. His address was listed as 3400 N.W. 30th Street, Lauderdale Lakes, Ft. Lauderdale, Florida.

6. Rachel Grupico remained domiciled in New York and continued to reside with their minor children at 1330 60th Street, Brooklyn, New York, the address reported on their 1974 return.

7. On October 4, 1973 petitioner closed on a home which he purchased at 6851 S.W. 8th Street, Plantation, Florida. Although petitioner's representative testified during the hearing that petitioner had never legally separated from, or divorced Rachel Grupico, the closing statement and deed of the Plantation

Florida home show that said property was purchased by "Joseph Grupico and Eleanor M. Grupico, his wife".

8. Petitioner submitted the following documents from Florida Mar-El Co., Inc. as indicia of his residence in Florida during 1974:

(a) A letter from the President of Florida Mar-El Co., Inc. dated June 15, 1981, wherein he stated that "Mr. Joseph Grupico was an employer and principal for the Mar-El Corp. for 1974, and that he was residing in Florida the entire year of 1974.";

(b) A copy of a Corporation Annual Report covering 1974 which shows petitioner's address as 6851 S.W. 8th Street, Plantation, Florida;

(c) A copy of the compensation of officers schedule of the corporation's return for the taxable year ended November 30, 1974, which shows that petitioner was vice president, held 30 percent of the common stock, received compensation of \$9,100.00, and devoted 100 percent of his time to the corporation.

9. Florida Mar-El Co., Inc. did not have an office located in New York.

10. Subsequent to the hearing held herein petitioner submitted, inter alia, the following:

(a) A letter from State Farm Insurance Co. wherein it is stated that said company "has insured Joseph Grupico as a licensed driver of the State of Fla. (auto insurance) since 1973."

(b) The previously mentioned deed to the Plantation, Florida property.

(c) A notarized affidavit dated February 9, 1983 wherein petitioner stated that:

(1) "I have been a resident of the State of Florida since December 27, 1972. I have resided at 6851 S.W. 8th St. Plantation, Florida since October 4, 1973."

(2) "I did not in 1974 have an apartment or a home in the State of New York and in 1974 I did not pay any utility bills in New York State."

(3) "I spent ninety nine percent of my time where I have my business in Fort Lauderdale, Florida and my only occasion to come to New York is around Christmas holiday for about ten days to visit my children."

(4) "I have no bank accounts or any other interests in the State of New York."

CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent. (20 NYCRR 102.2(d)(1)).

B. That petitioner Joseph Grupico was domiciled in the State of Florida during the entire taxable year 1974.

C. That section 605(a) of the Tax Law defines a resident individual as an individual: (2) who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than one hundred eighty-three days of the taxable year in this State.

D. That petitioner Joseph Grupico was not a resident of the State of New York during 1974 within the meaning and intent of section 605(a)(2) of the Tax Law.

E. That the petition of Joseph Grupico and Rachel Grupico is granted and the Notice of Deficiency dated February 22, 1980 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 21 1983

Rodnick W. Chin
PRESIDENT

Francis R. Kaemp
COMMISSIONER

W. J. [Signature]
COMMISSIONER