

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony & Alice Perone

: 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

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Anthony & Alice Perone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony & Alice Perone
Bedford Farms Rd.
Bedford Village, NY 10506

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
6th day of May, 1983.

David Parchuck

James A. England

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony & Alice Perone :

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

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Morris Ackerman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris Ackerman
114 Liberty Street
New York, NY 10006

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
6th day of May, 1983.

David Parchuck

Morris Ackerman

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Anthony & Alice Perone
Bedford Farms Rd.
Bedford Village, NY 10506

Dear Mr. & Mrs. Perone:

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
Morris Ackerman
114 Liberty Street
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY PERONE and ALICE PERONE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Anthony Perone and Alice Perone, Bedford Farms Road, Bedford Village, New York 10506, 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. 23767).

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 June 15, 1981 at 2:45 P.M. Petitioners appeared by Morris Ackerman, Registered Public Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner Anthony Perone was domiciled in and a resident of New York State for 1975.

FINDINGS OF FACT

1. Petitioners, Anthony Perone and Alice Perone, failed to file a New York State personal income tax return for 1975.

2. On June 29, 1978, the Audit Division issued a Notice of Deficiency against the petitioners imposing personal income tax of \$1,421.72, together with penalties pursuant to section 685(a)(1) and (a)(2) of the Tax Law and interest of \$757.01, for a total of \$2,178.73. The Notice of Deficiency was

based on a Statement of Audit Changes issued against petitioners under date of April 13, 1974 wherein it computed their liability on the basis that they were New York State residents for the entire year 1975 because they failed to submit information requested in correspondence sent them by the Audit Division.

3. On the 22nd day of April, 1980, a pre-hearing conference was held. At said conference, the tax liability was reduced from \$1,421.72 to \$1,088.64. This reduction in tax liability will also effect the amount of penalty due pursuant to section 685, subdivisions (a)(1) and (a)(2).

4. Petitioner, Anthony Perone's representative contended, inter alia, that petitioner separated from his wife sometime in 1975. The representative also contended that either before or subsequent to petitioner's separation, he went to Pennsylvania to work. Petitioner's representative was unable to state with any degree of certainty when petitioner left New York State; nor where petitioner resided while in Pennsylvania. Petitioner, he contends, entered New York only to visit his two minor children.

5. Petitioner entered into a property settlement agreement with his spouse under date of November 20, 1975. The agreement provided that petitioner and his wife execute a fee simple deed conveying half the premises (owned by them) to the wife and half to the trustee for the children.

6. Petitioners filed a joint Federal income tax return for the year at issue. The address shown on petitioners' return was Bedford Farms Road, Bedford Village, New York.

CONCLUSIONS OF LAW

A. That the burden is upon any person asserting a change of domicile to show that the necessary intention to change such domicile existed (20 NYCRR 102.2(d)(2) and section 689(e) of the Tax Law). That the testimony elicited

from petitioner, Anthony Perone's, representative as to petitioner's intent to change his domicile and where petitioner resided for the subject year was vague, conflicting, confusing and unsupported by any credible evidence.


B. That petitioners, Anthony Perone and Alice Perone, were domiciled in and residents of New York State for entire year 1975 in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

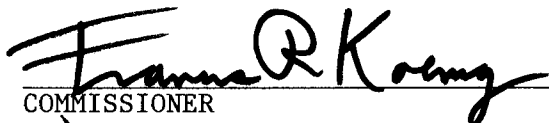
C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 29, 1978, to be consistent with Finding of Fact "3" determined hereto; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as hereby modified, is sustained, together with such penalties and interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

REFUSED

DECLASED

RTE. #

CARR. INITS

Morris Ackerman
114 Liberty Street
New York, NY 10006

RECEIVED

264

CERTIFIED

P 481 207 700

MAIL

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

May 6, 1983

Anthony & Alice Perone
Bedford Farms Rd.
Bedford Village, NY 10506

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Morris Ackerman
114 Liberty Street
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ANTHONY PERONE and ALICE PERONE
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, Anthony Perone and Alice Perone, Bedford Farms Road, Bedford Village, New York 10506, 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. 23767).

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 June 15, 1981 at 2:45 P.M. Petitioners appeared by Morris Ackerman, Registered Public Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner Anthony Perone was domiciled in and a resident of New York State for 1975.

FINDINGS OF FACT

1. Petitioners, Anthony Perone and Alice Perone, failed to file a New York State personal income tax return for 1975.

2. On June 29, 1978, the Audit Division issued a Notice of Deficiency against the petitioners imposing personal income tax of \$1,421.72, together with penalties pursuant to section 685(a)(1) and (a)(2) of the Tax Law and interest of \$757.01, for a total of \$2,178.73. The Notice of Deficiency was

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B. That petitioners, Anthony Perone and Alice Perone, were domiciled in and residents of New York State for entire year 1975 in accordance with the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 29, 1978, to be consistent with Finding of Fact "3" determined hereto; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as hereby modified, is sustained, together with such penalties and interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983



PRESIDENT



COMMISSIONER



COMMISSIONER