

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Lorence & Sally Press	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of NYS & NYC Income	:	
Tax under Article 22 & 30 of the Tax Law for the	:	
Years 1974 - 1976.	:	

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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Lorence & Sally Press, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lorence & Sally Press  
401 E. 86th St.  
New York, NY 10018

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  
15th day of July, 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 :  
Lorence & Sally Press :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Years 1974 - 1976. :

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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Stephen Edelstein the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Edelstein  
Zeiderman, Edelstein & Tivoli, P.C.  
211 E. 48th St.  
New York, NY 10017

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  
15th day of July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

July 15, 1983

Lorence & Sally Press  
401 E. 86th St.  
New York, NY 10018

Dear Mr. & Mrs. Press:

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 & 1312 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  
Stephen Edelstein  
Zeiderman, Edelstein & Tivoli, P.C.  
211 E. 48th St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
LORENCE AND SALLY PRESS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974, 1975 and 1976	:	
and under Article 30 of the Tax Law for the	:	
Year 1976.	:	

---

Petitioners, Lorence and Sally Press, 401 East 86th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974, 1975 and 1976 and under Article 30 of the Tax Law for the year 1976 (File No. 30398).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 31, 1983 at 1:15 P.M., with all briefs to be submitted by February 14, 1983. Petitioners appeared by Zeiderman, Edelstein & Tivoli, P.C. (Stephen Edelstein, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether, during each of the years 1974 and 1975, petitioners were domiciled in New York and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and were thus resident individuals under Tax Law section 605(a)(1).

FINDINGS OF FACT

1. Petitioners, Lorence and Sally Press, filed a joint New York State Income Tax Resident Return for January 1 through April 30, 1974, that portion of the taxable year 1974 during which they claimed to be domiciliaries and residents of this state. Appended to their return was a Schedule for Change of Resident Status, apportioning the following amounts of income and adjustments to income to the resident and nonresident period:

	<u>RESIDENT PERIOD - FEDERAL AMOUNT</u>	<u>NONRESIDENT PERIOD FEDERAL AMOUNT</u>	<u>NYS AMOUNT</u>
Wages, salaries, tips, etc.	\$15,428	\$30,855	--
Adjustments	2,554	5,108	--
Total income	<u>\$12,874</u>	<u>\$25,747</u>	<u>--</u>

Petitioners also submitted a Claim for Resident Tax Credit, seeking a credit in the amount of \$582.00 for income tax payable to the State of New Jersey.

Petitioners did not file a New York personal income tax return for the taxable year 1975.

For the taxable year 1976, petitioners filed a joint New York State Income Tax Resident Return, reflecting New York State personal income tax due of \$598.00 and New York City personal income tax due of \$250.00.

2. On December 18, 1979, the Audit Division issued to petitioners a Statement of Audit Changes, proposing New York State personal income tax due under Article 22 of the Tax Law for the years 1974, 1975 and 1976 and New York City personal income tax due under Article 30 of the Tax Law for the year 1976, in the amounts shown below.

	<u>1974</u>	<u>1975</u>	<u>1976</u>	
			<u>NYS</u>	<u>NYC</u>
Personal income tax	\$4,175.30	\$1,729.63	\$ 888.16	\$323.02
Tax Law §685(a)(1) penalty	939.44	389.16	272.52	

Tax Law §685(a)(2) penalty	1,043.83	389.16	199.84	
Tax Law §685(b) penalty	208.77	86.48	60.56	
Tax Law §685(c) penalty	189.79	78.62	55.06	
	<u>\$6,557.13</u>	<u>\$2,673.05</u>	<u>\$1,476.14</u>	<u>\$323.02</u>

According to the explanation furnished in the Statement, petitioners failed to file returns and were deemed by the Audit Division to have been residents for the three years at issue. In its calculation for 1974, the Audit Division failed to take account of petitioners' adjustments to income in the amount of \$7,662.00.

On April 4, 1980, the Audit Division issued to petitioners a Notice of Deficiency, asserting state and city personal income taxes due, plus penalties, in the above-stated amounts.

On December 5, 1977, Lorence Press and Sally Press executed a consent extending the period of limitation on assessment of personal income tax for taxable year 1974 to April 15, 1979. On or about February 6, 1979, Lorence Press executed a consent extending the period of limitation on assessment for the years 1974 and 1975 to April 15, 1980.

3. On September 8, 1977, the Audit Division issued to petitioners a Notice of Tax Due, billing them for New York State and New York City personal income taxes for 1976 in the amount of \$848.00 (the amount of such taxes as indicated on their return), plus interest of \$78.21. On or about April 19, 1979, the State Tax Commission issued a warrant commanding a levy upon petitioners' real and personal property in the amount of \$1,132.85, the New York State and New York City personal income taxes due for 1976, plus penalties and interest. Petitioners claim to have paid that amount and introduced in evidence a copy of the warrant, bearing across its face the stamp, "Satisfaction - Paid in Full".

4. Prior to May 1, 1974, the date petitioners claim to have changed their domicile and residence to New Jersey, petitioners were New York domiciliaries, residing in an apartment at 401 East 86th Street.

5. Mr. Press was employed by a New Jersey firm as sales manager, a position which frequently required him to work up to 18 hours per day. In order to enable petitioners to spend more time together, they decided to relocate to Montclair, New Jersey, where they leased an apartment on a month-to-month basis.

6. On October 23, 1975, the New Jersey Division of Motor Vehicles issued to Mr. Press a Certificate of Ownership of a Motor Vehicle and a Vehicle Registration for his 1972 Mercedes Benz.

7. Mr. Press's 1974 Wage and Tax Statement bore his Montclair, New Jersey address.

8. At least during August, 1974, petitioners maintained a checking account at the Bloomfield, New Jersey branch of Midlantic National Bank.

9. During the period of their residence in New Jersey, petitioners continued to pay rental for their apartment situated on East 86th Street. Mr. Press testified concerning their reason for doing so, "I didn't expect to be living in New Jersey forever, and I wanted to maintain that apartment because it happened to be a good value; and there was a time that that apartment was going to go co-op or condo, and I wanted to be in a position to enjoy that." His expectation that he would not dwell in New Jersey "forever" was due to the nature of his employment; as he testified, "The nature of the business was such that I could easily have been sent out to California or Chicago to start a branch to supply our customers west of the Rockies, and so therefore,

there was always the probability that I would have to move my domicile or residence."

10. During the period May 1, 1974 through December 31, 1975, Mr. Press travelled to New York City 3 or 4 days per month to call on a major customer of his employer; on such occasions, petitioners stayed overnight at the East 86th Street premises.

11. During the period May 1, 1974 through December 31, 1975, Mr. Press did not register to vote in New Jersey, kept his New York driver's license, and retained his New York bank accounts.

12. On or about January 1, 1976, petitioners again took up residence at 401 East 86th Street, New York City.

13. Petitioners engaged the services of a New York certified public accountant in connection with the preparation of their federal and New York returns for the years at issue. Mr. Press fully explained the facts and circumstances surrounding petitioners' move to New Jersey to the accountant, who advised that petitioners were not required to file a New York return for 1975.

#### CONCLUSIONS OF LAW

A. That petitioners filed a joint resident return for 1976 and paid the New York State and New York City personal income taxes shown thereon (with interest and penalties); the deficiency asserted against them for that year is accordingly cancelled.

B. That according to the definitions furnished by section 605 of the Tax Law (as in effect during the years in question), a resident individual is one who is domiciled in New York unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere and spends not more



than 30 days of the taxable year in this state. Section 605(a)(1). If not domiciled in New York, an individual may nonetheless be deemed a resident for tax purposes if he maintains a permanent place of abode in New York and spends more than 183 days of the taxable year in New York (unless in the armed forces during an induction period). Section 605(a)(2).

C. That petitioners have not shown that on May 1, 1974, they intended to relinquish their New York domicile. They maintained and made use of their Manhattan apartment during the entire period May 1, 1974 through December 31, 1975, Mr. Press retained his New York voter registration and operator's license, and petitioners kept their New York bank accounts. Nor have petitioners shown that they intended to make New Jersey their fixed and permanent home. Mr. Press's testimony was that he did not anticipate living in New Jersey "forever"; further, petitioners held only a month-to-month leasehold on their Montclair apartment.

Petitioners, New York domiciliaries who maintained a permanent place of abode in this state during the whole of 1974 and 1975, were residents of this state for personal income tax purposes.

D. That inasmuch as petitioners filed a return for the taxable year 1974, the penalties asserted against them for such year pursuant to subdivision (a), paragraphs (1) and (2), and subdivision (b) of section 685 are cancelled. Inasmuch as petitioners' failure to file a return for 1975 was not due to gross negligence or willful intent to disobey the tax statutes on their part, the penalties asserted against them for such year pursuant to subdivision (a), paragraphs (1) and (2), and subdivision (b) of section 685 are also cancelled. Subdivision (c) of section 685, which levies a penalty for failure to timely file a declaration of estimated tax and timely pay installments, contains no

provision for waiver of the penalty on account of reasonable cause; the penalties asserted against petitioners for 1974 and 1975 pursuant to subdivision (c) of section 685 must therefore be sustained.

E. That the Audit Division is hereby directed to recalculate the deficiency issued against petitioners for 1974, taking into account adjustments to income of \$7,662.00.


F. That the petition of Lorence and Sally Press is granted to the extent indicated in Conclusions of Law "A", "D" and "E"; that the Notice of Deficiency issued on April 4, 1980 is to be modified accordingly; and that except as so modified, the deficiency is in all other respects sustained.

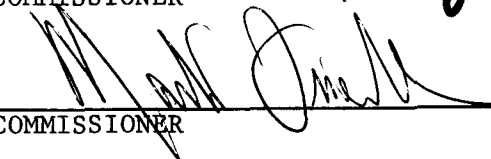
DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER