

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Angel & Manuela Rivera : 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

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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Angel & Manuela Rivera, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Angel & Manuela Rivera
909A South Rolfe St.
Arlington, VA 22204

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
11th day of February, 1983.

David Parchuck

Bennie A. Hayward

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 11, 1983

Angel & Manuela Rivera
909A South Rolfe St.
Arlington, VA 22204

Dear Mr. & Mrs. Rivera:

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
ANGEL RIVERA and MANUELA RIVERA
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1977.

DECISION

Petitioners, Angel Rivera and Manuela Rivera, 909A South Rolfe Street, Arlington, Virginia 22204, 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. 27060).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on April 30, 1981 at 1:15 P.M. Petitioner Angel Rivera appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioners were residents of New York State for income tax purposes for the year 1977.

FINDINGS OF FACT

1. Petitioners, Angel Rivera and his former wife, Manuela Rivera, filed a joint New York State income tax nonresident return for 1977, on which petitioner Angel Rivera allocated his salary from the Community Services Administration, the sole item of income reported on the return, to sources totally outside New York State. On said return, petitioners listed their address as "1111 Army Navy Drive, Arlington, Virginia 22202."

2. On April 5, 1979, the Audit Division issued a Notice of Deficiency against the petitioners asserting personal income tax due of \$124.91 plus interest for the year 1977 on the grounds that a domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. That, since the petitioners have made various moves since leaving New York State, the Audit Division contended that this indicated that they did not establish a new permanent residence outside of New York State. Therefore, they are considered residents of New York State for 1977 and, as such, are subject to tax on all income earned.

3. On September 10, 1980, petitioner Angel Rivera made a partial payment of \$124.91 on the Notice of Deficiency issued April 5, 1979.

4. In 1975, petitioner Angel Rivera was permanently transferred by his employer, the Community Services Administration, to its office at 1200 19th Street N.W., Washington, D.C. 20506. At the time of this hearing, the petitioner was still working at that office.

5. In 1975, the petitioners were separated. In October 1975, petitioner Manuela Rivera moved to Puerto Rico and she remained there throughout the year at issue. Since 1975 neither of the petitioners have resided in New York State.

6. In 1976, petitioner Angel Rivera rented an apartment in the Washington, D.C. area until sometime in 1977. The remainder of 1977 petitioner resided in an apartment at 1111 Army Navy Drive, Arlington, Virginia which he leased on a three-year basis.

7. In 1975, petitioner Angel Rivera registered his automobile in Virginia. He did not obtain a Virginia driver's license but rather retained his recently renewed New York license.

8. In 1975, petitioner Angel Rivera changed his bank accounts from New York to Washington, D.C. area banks.

9. Petitioner Angel Rivera did not vote in New York after leaving the state in 1975.

10. Petitioner's employer, the Community Services Administration, erroneously withheld New York State income tax from the petitioner's wages during 1976 and part of 1977. In 1977, petitioner notified his employer of the error at which time his employer discontinued withholding New York State tax and began withholding Virginia tax.

11. Petitioner testified that he filed a 1976 New York State income tax return claiming a refund of all the New York State income tax withheld by his employer. Also, petitioner testified that none of his wages were allocated to New York State on said return and that he received an income tax refund from New York State in the amount requested.

CONCLUSIONS OF LAW

A. That petitioner Angel Rivera moved from New York State to Washington, D.C. during 1975. That, during 1977, petitioner did not maintain a permanent place of abode in New York State. That petitioner did maintain, for the entire year at issue, a permanent place of abode in the Washington, D.C. area and did not spend more than 30 days in New York State during 1977. Accordingly, petitioner Angel Rivera was a nonresident of New York State for 1977 within the meaning of section 605 of the Tax Law.

B. That the petition of Angel Rivera and Manuela Rivera is granted and the Notice of Deficiency issued April 5, 1979 is cancelled.

C. That the Audit Division is directed to authorize a refund of \$4,713.08, which represents the overpayment shown on petitioners' 1977 return and partial payment on the Notice of Deficiency, together with such interest as may be lawfully due petitioners.

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

Robert A. Bland
ACTING PRESIDENT

Francis Q. Koelmy
COMMISSIONER

[Signature]
COMMISSIONER