

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Helen Roffman :
for Redetermination of a Deficiency or for Refund :
of New York State and New York City Income Tax :
under Articles 22 and 30 of the Tax Law for the :
Year 1976 and Article 22 of the Tax Law and Chapter :
46, Title T of the Administrative Code of the City :
of New York for the Year 1977. :
_____ :

AFFIDAVIT OF MAILING

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Bernard & Helen Roffman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Helen Roffman
6 Horizon Rd.
Fort Lee, NJ 07024

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
27th day of May, 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 :
Bernard & Helen Roffman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Income Tax :
under Articles 22 and 30 of the Tax Law for the :
Year 1976 and Article 22 of the Tax Law and :
Chapter 46, Title T of the Administrative Code of :
the City of New York 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Michael Strauss the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Strauss
Strauss, Comas & Co.
250 5th Ave.
New York, NY 10001

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
27th day of May, 1983.

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Bernard & Helen Roffman
6 Horizon Rd.
Fort Lee, NJ 07024

Dear Mr. & Mrs. Roffman:

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
Michael Strauss
Strauss, Comas & Co.
250 5th Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BERNARD ROFFMAN AND HELEN ROFFMAN

for Redetermination of a Deficiency or for
Refund of New York State and New York City
Income Tax under Articles 22 and 30 of the Tax
Law for the Year 1976 and Article 22 of the
Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Year 1977.

DECISION

Petitioners, Bernard Roffman and Helen Roffman, 6 Horizon Road, Fort Lee, New Jersey 07024, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 and Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 30459).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1982 at 2:00 P.M. Petitioners appeared by Michael Strauss, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners were properly taxable as residents of the State of New York and the City of New York for the tax years 1976 and 1977.

FINDINGS OF FACT

1. The petitioners, herein, Bernard Roffman and his wife Helen Roffman, timely filed IT-201/208 New York State Income Tax Resident Returns for 1976 and

1977. Their address on both returns was given as 6 Horizon Road, Fort Lee, New Jersey.

2. On January 25, 1980 the Audit Division issued a Notice of Deficiency against petitioner Bernard Roffman stating as follows:

<u>"Additional Tax Due or Tax Deficiencies</u>	<u>Total Penalty &/or Interest</u>	<u>Amount Due</u>
\$10,369.54	\$1,977.80	\$12,347.34"

3. The Statement of Audit Changes issued on September 20, 1979 stated that the basis for the deficiency was that petitioners changed their domicile on November 1, 1976 to that of New Jersey and ceased to maintain a permanent place of abode in New York State and accordingly out-of-state partnership losses incurred thereafter could not be offset against New York income.

4. The petitioners contend that they were residents of the State of New York during the period November 1, 1976 through March 27, 1977 and that, accordingly, no change of residence took place on November 1, 1976, as asserted by the Audit Division.

5. Mr. Roffman was a principal in wholesale meat business located in the West Harlem Meat Market (125th Street and 12th Avenue) in New York City and as a result thereof his responsibilities required him to be on the premises of his business daily at between 3:00 and 4:00 a.m. Because of these factors, Mr. Roffman found it convenient to maintain a residence close to his place of business and therefore petitioners maintained a rental apartment at 3333 Henry Hudson Parkway, Riverdale, New York.

6. In November 1976, the lease on the Riverdale apartment expired and, subsequent thereto, petitioners entered into a new lease for an apartment at 6 Horizon Road, Fort Lee, New Jersey, assertedly, so that Mr. Roffman would again be in close proximity to his meat market business located in West Harlem.

7. Petitioners also owned a house at Atlantic Beach, New York, a resort area, which they purchased in 1972 and sold on or about March 27, 1977.

8. Petitioners' representative maintained that the Atlantic Beach house was their permanent place of abode at all times in issue herein, i.e. for the income tax years 1976 and 1977.

9. The petitioners did not offer any evidence of probative value that they actually occupied the Atlantic Beach house or that they were in fact residents of the State of New York subsequent to November 1, 1976.

CONCLUSIONS OF LAW

A. That the burden of proof negating the asserted tax deficiency herein in upon the petitioners (Tax Law section 689(e); section T46-189.0(e) of Chapter 46, Title T of the Administrative Code of the City of New York).

B. That the petitioners herein failed to offer any probative evidence to sustain their assertion that they in fact were permanent residents of New York during the period of time in issue and accordingly failed to sustain their burden of proof.

C. That the petition herein is denied and the Notice of Deficiency is sustained.

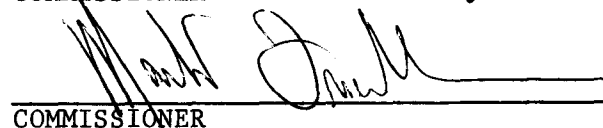
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER