

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Etienne B. Rones

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under 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

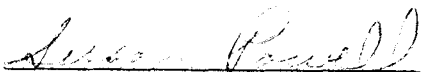
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Etienne B. Rones, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Etienne B. Rones
P.O. Box 21
New Milford, CT 06776

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
28th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

September 28, 1983

Etienne B. Rones
P.O. Box 21
New Milford, CT 06776

Dear Mr. Rones:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ETIENNE B. RONES : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under 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. :

Petitioner, Etienne B. Rones, P.O. Box 21, New Milford, Connecticut 06776, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 33549).

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 December 7, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner, Etienne B. Rones, was domiciled in, and a resident of the State and City of New York during the year 1977.

FINDINGS OF FACT

1. Etienne B. Rones (hereinafter petitioner) filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) with his wife, Shulamith B. Rones, for the year 1977. On said return, which was filed under the status "married filing separately on one return", the tax liability

was computed solely on Mrs. Rones' reported total New York income of \$15,385.00. The address reported thereon was 148-18 61 Road, Flushing, New York 11367.

2. On March 20, 1981 the Audit Division issued a Statement of Audit Changes to Etienne B. and Shulamith B. Rones wherein it stated:

"The starting point for computing New York State total income is Federal Adjusted Gross Income. Since your Federal Adjusted Gross Income is \$35,244.00, this is the figure used in computing your New York State taxable income."

Based on the above, petitioner's total New York income was computed as follows:

"Federal Adjusted Gross Income	\$35,244.00
Total Income Reported	15,385.00
Unreported Income	<u>\$19,859.00"</u>

The "unreported income" of \$19,859.00 was assigned to petitioner as his total New York income.

Incorporated into the recomputation of tax were the following adjustments:

- (a) The total New York income of \$15,385.00 reported by Mrs. Rones was reduced by state and local income tax refunds of \$264.00,
- (b) New York itemized deductions claimed by Mrs. Rones were increased to conform to Federal itemized deductions, and
- (c) Petitioner was allowed a personal exemption of \$650.00.

3. Pursuant to the Statement of Audit Changes, personal income taxes due were computed to be as follows:

	<u>NEW YORK STATE</u>		<u>NEW YORK CITY</u>	
	<u>HUSBAND</u>	<u>WIFE</u>	<u>HUSBAND</u>	<u>WIFE</u>
"Balance Due Personal Income Tax	\$1,305.08	(\$31.61)	\$456.32	(\$11.90)"

Accordingly, a Notice of Deficiency was issued solely against petitioner, Etienne B. Rones on April 1, 1981 asserting New York State and City income

taxes of \$1,717.89,¹ plus interest of \$429.68, for a total due of \$2,147.57.

4. Petitioner contended that he was a domiciliary and resident of the State of Connecticut during the year at issue herein. Accordingly, he argued that his income earned in Connecticut is exempt from taxation by New York State and City.

5. In early November 1976 petitioner, due to marital problems, separated from his wife and moved to Connecticut. He removed his personal belongings from his family home at 148-18 61 Road, Flushing, New York, and moved into a motel in Connecticut for a three week period. His wife, Shulamith B. Rones continued to reside at the Flushing, New York house with her and petitioner's teenage daughter. Title to the house was, and continued to be solely in Mrs. Rones' name.

6. Within a few days of his arrival in Connecticut petitioner, a consulting engineer, found employment with United Engineers, Inc., a Massachusetts company which assigned him to work at the business location of its client, Branson Sonic Power, in Dansbury, Connecticut.

7. In December 1976 petitioner moved to a house in Brookfield, Connecticut. He occupied a room in the house which was shared by two other individuals, one of them being the owner. He continued residing there until the end of July, 1977 when, at the request of the owner, he moved out. He paid rent of \$150.00 per month for this accommodation.

8. On August 1, 1977 petitioner moved to a house in Danbury, Connecticut. His accommodations consisted of a room, bath, kitchenette and porch. He shared use of the refrigerator with the owner. He paid rent of \$300.00 per month and continued to reside there until the later part of May 1978.

¹ The New York State and City income taxes asserted pursuant to the Notice of Deficiency represent the balance of tax due by petitioner, reduced by the computed overpayments for Mrs. Rones.

9. Petitioner's employment with United Engineers, Inc. terminated on August 31, 1977. He remained unemployed until May 14, 1978, at which time he secured employment in Windsor, Connecticut. During this period petitioner collected unemployment insurance benefits. His employment in Windsor continued for a period of twenty-two (22) months. Subsequent employment remained in the State of Connecticut.

10. In the latter part of May 1978, petitioner moved to a house in Windsor, Connecticut. He shared this house with two other individuals. Each had their own bedroom. The rent and utilities expenses were shared. Petitioner continued to reside in this house for approximately nine months. Subsequently, he rented his own apartment in Connecticut and ultimately, in or about 1980, he moved into a home in New Milford, Connecticut, which he had purchased in the summer of 1977. Petitioner is currently still residing in this house. The record contains no information with respect to the use of this house from the time of purchase in 1977, until the time of his occupancy.

11. Prior to his removal to Connecticut, petitioner was a domiciliary and resident of New York for twenty-five (25) years. He moved to Connecticut since he had previously worked there in 1969 and had made several friends there. His intent, on moving to Connecticut, was to remain there.

12. On petitioner's removal to Connecticut he closed his personal bank account in New York and established an account in Connecticut. He provided no support for his wife or daughter.

13. Petitioner continued to maintain his New York driver's license while living in Connecticut. This was done since it was cheaper than obtaining a Connecticut license.

14. Petitioner voted in Connecticut during 1977.

15. Petitioner spent three days in New York for the purpose of visiting his family during 1977.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to corresponding sections of Chapter 46, Title T.

B. 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)].

C. 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. [20 NYCRR 102.2(d)(2)].

D. That through petitioner's actions, he has demonstrated that the necessary intent existed, at the time of his removal to Connecticut, to make said state his fixed and permanent home. Accordingly, petitioner was domiciled in the State of Connecticut during 1977.

E. That section 605(a)(2) of the Tax Law provides in pertinent part that a resident individual means an individual:

"...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."


F. That petitioner was not a resident individual of New York State and City during taxable year 1977 within the meaning and intent of section 605(a)(2) of the Tax Law.


G. That the petition of Etienne B. Rones is granted and the Notice of Deficiency dated April 1, 1981 is hereby cancelled.

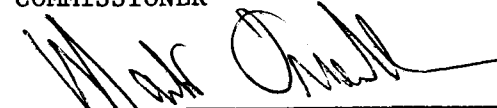
DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER