

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Sunya A. Rosenberg	: : : : : :	: : : : : :
		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 1975 & 1976.		

State of New York
County of Albany

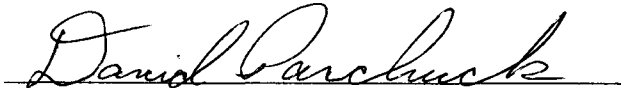
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon Sunya A. Rosenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sunya A. Rosenberg
53 Wolcott Rd.
Wethersfield, CT 06109

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
ALBANY, NEW YORK 12227

May 27, 1983

Sunya A. Rosenberg
53 Wolcott Rd.
Wethersfield, CT 06109

Dear Ms. Rosenberg:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SUNYA A. ROSENBERG
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 Years 1975 and 1976.

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DECISION

Petitioner, Sunya A. Rosenberg, 53 Wolcott Road, Wethersfield, Connecticut, filed a petition 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 years 1975 and 1976 (File No. 28757).

A formal hearing was held before Robert A. Couze, Hearing Office, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 22, 1982 at 10:30 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq., (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether petitioner was a resident of New York State and New York City for income tax purposes for the tax years 1975 and 1976.

II. Whether the business expenses reported on petitioner's Federal returns for 1975 and 1976 were actually expended and, if so, whether they were ordinary and necessary expenditures directly related to petitioner's business.

FINDINGS OF FACT

1. On October 4, 1979 the Audit Division, as the result of a field audit, issued a Notice of Deficiency against petitioner, Sunya A. Rosenberg, in the amount of \$5,768.10 plus penalty and interest of \$3,886.35 for a total due of

\$9,654.45 for the taxable years 1975 and 1976. A Statement of Audit Changes issued June 15, 1979 indicated that the deficiency was based on a determination that petitioner was a resident of New York City and New York State for the years in issue. Petitioner did not file New York State income tax returns for 1975 and 1976.

2. During the years in issue petitioner conducted a business, Waterways Investments Development Corp., which was incorporated under the laws of the State of Delaware. Petitioner contended that she operated her business out of a one bedroom penthouse apartment located at 140 East 56th Street, New York City. The lease for said apartment was in the name of the corporation. The business generally consisted of petitioner using her influence and business and political contacts to promote various business enterprises.

3. On her 1975 Federal tax return petitioner reported gross receipts of \$180.00 from her business and total business deductions of \$22,551.14. For 1976 petitioner reported gross receipts of \$205.00 and business deductions of \$21,425.00. Both the Internal Revenue Service and the Audit Division disallowed these deductions for both years. Petitioner claimed that the United States Tax Court had ruled that her business expenses were valid but she did not offer any evidence showing that such ruling applied to the items in issue on her state audit. Petitioner produced no other evidence substantiating any of the business deductions taken for the years in issue.

4. On audit the Audit Division found that the penthouse apartment was furnished as living quarters and that petitioner used the apartment as her residence, not as an office. Additionally, on an audit of petitioner's checks the auditor found that petitioner paid \$510.00 per month for the apartment and all electric and telephone bills were paid in New York. The auditor could find

no checks for payment of rent at any other address. All of petitioner's cancelled checks for clothing, drugs, liquor and miscellaneous purchases were made out to New York City stores. Petitioner also held memberships in two New York City clubs, El Morocco and the "21" Club.

5. Petitioner claimed that she only used the New York City apartment for business purposes as an office and as an occasional place to stay overnight while in New York and that she spent less than four months there in each of the years 1975 and 1976.

6. Petitioner maintains that she was a resident of the State of Connecticut for the years in issue. In this regard petitioner put in evidence two leases. One lease was in petitioner's previous name "Sunya K. Arden" and one Mary McCobb McDonald as co-tenants, for the rental of premises 109 North Kings Highway, Westport, Connecticut for the period May 1, 1974 through May 1, 1977. The second lease was in the name of one David Kuslan (apparently petitioner's father) and petitioner as co-tenants for the rental of premises 53 Wolcott Hill Road, Apt. B-3, Wethersfield, Connecticut, for the period September 1, 1975 through August 31, 1976.

7. On October 6, 1976, petitioner filed an application for enrollment as a voting elector in the State of Connecticut. On the application, petitioner stated her address to be 53 Wolcott Hill Road, Wethersfield, Connecticut and that her previous voting residence was in Hartford, Connecticut.

8. Petitioner also reported on her 1975 and 1976 1040 - U.S. Individual Income Tax Returns that her home address was 53 Wolcott Hill Road, Wethersfield, Connecticut.

9. Other than the leases and elector application, petitioner offered no cancelled rental payment checks, no local business bills, nor any other evidence indicative of a Connecticut residency during the taxable years in issue.

CONCLUSIONS OF LAW

A. That section 605(a)(1) of the Tax Law defines a resident individual as one who is domiciled in New York State unless the individual maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in New York State.

B. That section 689(e) of the Tax Law places the burden of proof on the petitioner in all cases before the Tax Commission with certain exceptions not herein applicable. Inasmuch as petitioner was unable to produce adequate evidence demonstrating that she was not a New York resident during the taxable years 1975 and 1976, she has failed to meet her burden of proof. Therefore petitioner was a resident of New York for personal income tax purposes for the years in issue within the meaning and intent of section 605(a)(1) of the Tax Law.

C. That petitioner failed to meet her burden of proof with respect to the disallowance by the Audit Division of deductions for certain business expenses insofar as she did not produce any evidence substantiating the disallowed expenses and she did not establish that such expenses were directly related to her business and not non-deductible personal expenses. Moreover, even if petitioner had satisfactorily shown a relevant United States Tax Court ruling in her favor, such changes in taxable income for Federal tax purposes are not binding on the Tax Commission which may conduct an independent audit or investigation (20 NYCRR 153.4).

D. That the petition of Sunya A. Rosenberg is denied and the Notice of Deficiency issued October 4, 1979 is sustained.

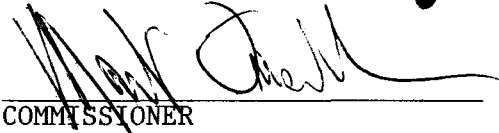
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

TAX APPEALS BUREAU

JUN 03 1983

RECEIVED

Sunya A. Rosenberg
53 Wolcott Rd.

Wethersfield, CT 06109

FORWARDED ORDER
EXPIRED

CERTIFIED

P 481 207 911

MAIL

FOE

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

May 27, 1983

Sunya A. Rosenberg
53 Wolcott Rd.
Wethersfield, CT 06109

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STATE TAX COMMISSION

cc: Petitioner's Representative

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STATE OF NEW YORK

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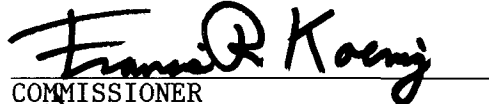
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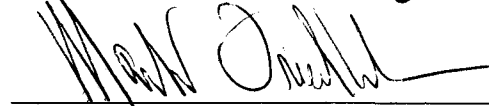
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER