

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ruhl Russell : 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 :
1973.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Ruhl Russell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ruhl Russell
351 W. 29th St.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
24th day of January, 1983.

Kathy Pfaffenbach

Conrad A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Ruhl Russell
351 W. 29th St.
New York, NY 10001

Dear Mr. Russell:

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	:	
RUHL RUSSELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, Ruhl Russell, 351 West 29th Street, New York, New York 10001, 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 1973 (File No. 20730).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 6, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner was a resident individual of New York State for 1973.

II. If, petitioner is found subject to New York State personal income tax, then, was there reasonable cause for his failure to file a personal income tax return for 1973.

FINDINGS OF FACT

1. Petitioner, Ruhl Russell, failed to file a New York State personal income tax return for 1973.

2. On September 26, 1977, the Audit Division issued a Notice of Deficiency against the petitioner imposing personal income tax of \$1,760.92, penalties of \$766.00 pursuant to section 685(a)(1) and (a)(2) of the Tax Law plus interest

of \$455.55 for a total of \$2,982.47. The Notice of Deficiency was based on a Statement of Audit Changes issued against petitioner under same date, which held that his earnings were subject to New York State personal income tax on the grounds that petitioner was a domiciliary of New York State and that he failed to submit information requested by the Audit Division.

3. Petitioner resided in his parents home in New York State until he was drafted into the United States Army in December 1965. In 1971, the army ordered petitioner to Germany where he remained until he was discharged sometime in November 1973.

4. During the period that petitioner was assigned to Germany, he continuously resided in "off post" bachelor's quarters provided by the United States Government. Petitioner did not pay for the use of the quarters furnished him.

5. Petitioner failed to introduce any evidence that, during the period he was assigned to Germany, he had any relation to the community in which he was assigned or engaged in any activities therewith.

6. Upon petitioner's discharge from the army sometime in November, 1973 petitioner remained in Germany and resided for a short while in the apartment of a friend with whom he shared expenses. Petitioner sought employment as a civilian at a military post in Germany, and accordingly, filed an application for permanent residence in Germany. However, petitioner was unable to obtain suitable employment in Germany. Thereafter, during the later part of November 1973, petitioner obtained a passport and travelled throughout Germany, Austria, France and Tunisia until his return to New York in January of 1974.

7. After returning to New York in January 1974, the petitioner has continuously maintained his domicile in New York State.

8. The 1973 Federal income tax return filed by the petitioner in 1974 showed a New York State address.

9. Petitioner failed to file a New York State personal income tax return for 1973 since he neither lived in nor maintained an abode in New York and had what he believed was a permanent place of residence in Germany. Petitioner believed that since his reported income for Federal purposes was derived from military services while overseas, it was not subject to New York State personal income taxes.

CONCLUSIONS OF LAW

A. That petitioner is not deemed to have lost his New York residence as the result of a temporary military assignment overseas. Persons entering military service retain their last civilian domicile no matter how long they are away unless in the interim there is clear and convincing proof of their adoption of a new domicile of choice (emphasis added) (Wilson v. Wilson, 189 S.W.2d 212). Petitioner failed to submit proof that he adopted a new domicile by choice.

B. That petitioner did not maintain a permanent place of abode outside New York State for the entire tax year of 1973 within the meaning and intent of section 605(a)(1) of the Tax Law and in accordance with 20 NYCRR 102.2(b) and 102.2(e) and is therefore, taxable as a resident individual.

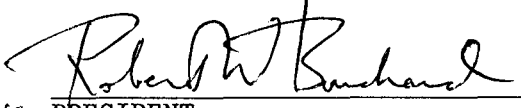
C. That petitioner, Ruhl Russell's failure to file a New York State personal income tax return for 1973 was due to reasonable cause and not due to willfull neglect, and, accordingly, penalties asserted pursuant to section 685(a)(1) and (a)(2) of the Tax Law are cancelled.

D. That the petition of Ruhl Russell is granted to the extent set forth in Conclusion of Law "C", and that, except as so granted the petition is in all other respects denied.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK
NO.

☐ HOLD

DATE

1st NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3848-A
Oct. 1980

~~Ruhl, Russell~~
~~351 W. 29th St.~~
~~New York, NY 10001~~

CERTIFIED

P 278 401 710

MAIL

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

January 24, 1983

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New York, NY 10001

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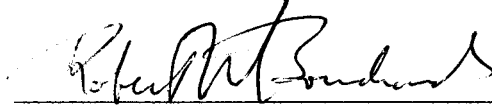
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