

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William M. & Margaret O. Sawyer :
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. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon William M. & Margaret O. Sawyer, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William M. & Margaret O. Sawyer
2832 Myers St.
Riverside, CA 92503

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James A. Hapner

pursuant to Tax Law section 174

Authorized to administer oaths

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

December 20, 1983

William M. & Margaret O. Sawyer
2832 Myers St.
Riverside, CA 92503

Dear Mr. & Mrs. Sawyer:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
WILLIAM M. SAWYER and MARGARET O. SAWYER
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.

DECISION

Petitioners, William M. Sawyer and Margaret O. Sawyer, 2832 Myers Street, Riverside, California 92503, filed a petition 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 (File No. 33994).

On May 9, 1983, petitioner William Sawyer waived a small claims hearing and consented to submission of this matter to the State Tax Commission. The following decision is rendered upon the file as presently constituted.

ISSUE

Whether petitioners were domiciled in and residents of New York during 1977.

FINDINGS OF FACT

1. Petitioners were sent a letter dated March 3, 1980, advising them that "Under authorization of Federal Law (Section 6103(d) of the Internal Revenue Code), this office has obtained information that you filed a Federal income tax return for the above year showing an address within this State, but we have been unable to locate your New York State income tax return." The letter asked for additional information as to the type of return filed, date filed, whether

payment was made and, if so, the serial number of the check, or if a refund was received, the amount and date received. Petitioners did not reply to said letter.

2. On October 6, 1980, the Audit Division issued to petitioners a Statement of Audit Changes wherein their New York State and City income tax liabilities were computed based on their Federal adjusted gross income, standard deduction and four exemptions. Said statement showed New York State and City personal income taxes due of \$1,198.55. Penalties, pursuant to section 685(a)(1) and (a)(2) of the Tax Law, and interest were also imposed. Accordingly, a Notice of Deficiency was issued on January 16, 1981.

3. Petitioner William Sawyer entered military service from New York City in 1947. He asserted that he established residence in Texas in May of 1959 which residence continued until July of 1964 when he was assigned to Southeast Asia. Approximately four years later he was assigned to Germany, and in July of 1974 was assigned to Rome, New York until his retirement in June of 1977.

4. Petitioner William Sawyer stated that while in Texas he rented a house and later moved into government quarters. When he was stationed in Asia in 1964, 1965, 1967 and 1968 he rented quarters, while in 1966 he lived in government quarters. During his assignment in Rome, New York, he lived in government quarters. He contended that he did not maintain any residence in the State of New York after entering the military in 1947 and, in fact, did not spend thirty days in New York since that year, except for military duty.

5. After his retirement from military service in June of 1977, petitioner William Sawyer left New York State and began working in the State of California in January of 1978. He used the New York address (Finding of Fact "1" supra)

"as a mailing address while I was looking for a place to settle in". The record does not disclose the state of domicile of Margaret Sawyer.¹

6. The petition filed on behalf of petitioners shows the following income during 1977:

Wages paid by the military for the period January, 1977 until June, 1977	\$ 9,513.00
Retirement pay from the military	7,862.24
Interest received from a Texas savings account	209.70
Wages paid to wife for services in California	2,149.30
Total	<u>\$19,734.24</u>

CONCLUSIONS OF LAW

A. That section 605(a)(1) of the Tax Law defines a New York State resident individual as one who is domiciled in New York unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere and spends not more than 30 days of the taxable year in this state. Section T46-105.0(a)(1) of Chapter 46, Title T of the Administrative Code of the City of New York sets forth the same criteria for defining a resident of the City of New York.

B. 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). Petitioners, William M. Sawyer and Margaret O. Sawyer, failed to sustain their burden of proof imposed by section 689(e) of the Tax Law and section T46 -189.0(e) of Chapter 46, Title T of the Administrative Code of the City of New York to show that they were domiciled in the State of Texas or anywhere outside the State and City of New

¹ As noted in Finding of Fact "5" supra, the record is void as to the domicile of the wife and it can only be assumed that it followed that of her husband [see 20 NYCRR 102.2(d)(5)].

York. Therefore, petitioners, are considered domiciled in the City and State of New York during 1977.

C. That, although petitioner Margaret O. Sawyer had wages during 1977 from sources in California and petitioner William M. Sawyer indicated that he began working in California in January of 1978, petitioners have failed to sustain the burden of proof to show that they: (i) changed domicile during 1977, (ii) maintained a permanent place of abode outside New York in 1977, or (iii) spent less than 30 days in New York City and New York State during 1977. Accordingly, petitioners are domiciled in and residents of New York City and New York State for 1977.

D. That petitioners' failure to file a New York State and City income tax return for 1977 was due to reasonable cause and not willful neglect. Therefore, the penalties asserted pursuant to section 685(a)(1) and (a)(2) of the Tax Law are cancelled.

E. That the petition of William M. Sawyer and Margaret O. Sawyer is granted to the extent that penalties are cancelled; and that, except as so granted, their petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 20 1983


PRESIDENT


COMMISSIONER


COMMISSIONER