

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Carlton & Veronica Brooks : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law and NYC :  
Personal Income Tax under Chapter 46, Title T of :  
the Administrative Code of the City of New York :  
for the Year 1980.

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State of New York }  
ss.:  
County of Albany }

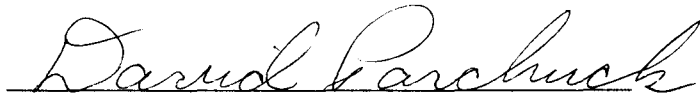
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Carlton & Veronica Brooks, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carlton & Veronica Brooks  
139-35 182nd St.  
Springfield Gardens, NY 11412

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  
9th day of August, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 9, 1984

Carlton & Veronica Brooks  
139-35 182nd St.  
Springfield Gardens, NY 11412

Dear Mr. & Mrs. Brooks:

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, 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

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In the Matter of the Petition	:	
	:	
of	:	
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CARLTON AND VERONICA BROOKS	:	DECISION
	:	
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 1980.	:	

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Petitioners, Carlton and Veronica Brooks, 139-35 182nd Street, Springfield Gardens, New York 11412, 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 1980 (File No. 36330).

A small claims hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1984 at 10:45 A.M. Petitioner Veronica Brooks appeared pro se and for her husband, Carlton Brooks. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner Carlton Brooks changed his domicile from New York to Oklahoma as of March 31, 1980 and thus became a nonresident individual of New York State and the City of New York.

FINDINGS OF FACT

1. Petitioners, Carlton and Veronica Brooks, filed separately on a New York State Income Tax Resident Return for 1980 on which they listed their home address as follows:

"139-35 182nd Street, Springfield Gardens, NY 11412.

Wife & 2 kids in NYC for entire year. (Husband) does not plan to return to NY State".

Carlton Brooks reported \$6,075.00 in New York income and Veronica Brooks \$11,568.00.

Carlton Brooks filed a Schedule for Change of Resident Status on which he claimed he moved to Oklahoma on April 1, 1980. The schedule showed \$21,750.00 in Oklahoma wage income and \$6,625.00 in New York wage income, with \$550.00 moving expenses deducted against New York wage income, resulting in total New York income of \$6,075.00.

2. Carlton Brooks filed an Oklahoma Individual Income Tax Return for 1980 reporting \$21,751.00 as Oklahoma adjusted gross income and paid \$81.23 in tax to that state. He claimed a credit for \$190.91 paid in New York State and City income taxes.

3. Petitioners filed a joint Federal return on which they used the Springfield Gardens address.

4. On November 6, 1981, a Notice of Deficiency was issued to Carlton and Veronica Brooks in the total amount of \$1,657.72 in taxes plus interest. A Statement of Audit Changes stated that the deficiency was due to the following adjustments:

"Since you were a domiciliary of New York State in 1980 your total income is fully taxable as a New York State resident. However, you have been allowed credit for the tax paid to Oklahoma in the amount of \$81.23.

Because your total income for the year exceeds \$25,000.00 your claimed household credit has been disallowed.

Your moving expense deduction has also been disallowed. That would only be allowed if you had moved into New York State."

5. Carlton Brooks is not a United States citizen, but has permanent resident status. He came to New York in 1968. For a number of years prior to 1980, he worked as a mechanic for American Airlines, Inc. at LaGuardia Airport, New York. In March, 1980, he was transferred to Tulsa, Oklahoma, by his employer. His employer issued wage and tax statements indicating that Mr. Brooks earned \$6,625.14 in New York and \$21,750.62 in Oklahoma in 1980.

6. Prior to his leaving for Oklahoma, Mr. Brooks lived with his wife and two children in their home in Springfield Gardens. The house was and is owned by both petitioners. Mrs. Brooks is employed in New York as a therapy aide.

7. When Mr. Brooks was transferred, he took only his clothes and an older car that was registered in his wife's name. He left the newer car, which was registered in his name, for his wife. He later purchased another car which he registered in Oklahoma. Mr. Brooks at first rented a furnished apartment in Tulsa. Subsequent to the year at issue, he bought a house there.

8. Although petitioners are not legally separated, they have been living apart since March, 1980. Although petitioners' children have been to visit their father at his home in Oklahoma, Mrs. Brooks has not. Mr. Brooks has been back to visit his children in New York.

#### CONCLUSIONS OF LAW

A. That petitioner Carlton Brooks changed domicile from New York to Oklahoma at the end of March, 1980. Accordingly, although he maintained a permanent place of abode in New York (the Springfield Gardens home he owned with his wife), he did not spend more than 183 days in New York. He became a

nonresident of New York State and New York City after March, 1980 (section 605(a) of the Tax Law; section T46-105.0(a) of the Administrative Code of the City of New York).

B. That section 654 of the Tax Law provides for the filing of New York State personal income tax returns when an individual changes his resident status during the tax year. Section T46-154.0 of the Administrative Code of the City of New York has similar provisions. The Audit Division is directed to recalculate the deficiency in accordance with said sections on the basis that petitioner Carlton Brooks had total New York income of \$6,625.00, itemized deductions of \$1,117.00 and exemptions of \$188.00 during his resident period, January 1, 1980 through March 31, 1980, and that he had no income from New York sources during his nonresident period, April 1, 1980 through December 31, 1980. (It is noted that the adjustments relating to household credit and moving expense have not been challenged by petitioners and are not at issue herein.)

C. That the petition of Carlton and Veronica Brooks is granted to the extent indicated in Conclusions of Law "A" and "B".

DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984

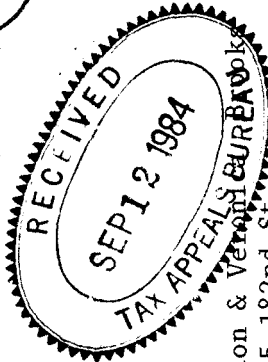
Roderick W. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Sullivan  
COMMISSIONER

TA 26 (9-79)

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



Carlton & Vernon Books  
139-35 182nd St.  
Springfield Gardens, NY 11412

CLAIM CHECK  
NO.

608572

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3849-A  
Oct. 1980

CERTIFIED

P 440977 376

MAIL

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

August 9, 1984

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139-35 182nd St.  
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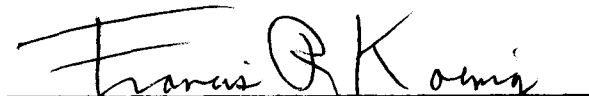
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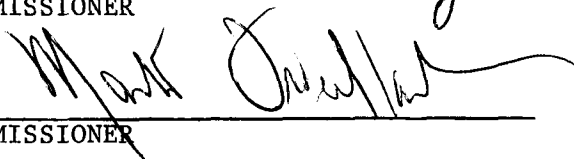
DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER