

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joel C. & Anne M. Chambron :
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 for the Year :
1975. :
:

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

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Joel C. & Anne M. Chambron, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel C. & Anne M. Chambron
67 Fourth Ave.
Lancaster, NY 14086

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
31st day of July, 1984.

David Parbuck

Annmarie G. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Joel C. & Anne M. Chambron
67 Fourth Ave.
Lancaster, NY 14086

Dear Mr. & Mrs. Chambron:

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, 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	:	
	:	
JOEL C. CHAMBRON AND ANNE M. CHAMBRON	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Joel C. Chambron and Anne M. Chambron, 67 Fourth Avenue, Lancaster, New York 14086, 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 1975 (File No. 35060).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Part VI, Buffalo, New York, on March 19, 1984 at 2:45 P.M. Petitioner Joel C. Chambron appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether petitioners incurred a change of domicile and resident status from Ohio to New York in May, 1975, or were domiciliaries and residents of New York for the entire 1975 tax year.

FINDINGS OF FACT

1. Petitioners herein, Joel C. Chambron and Anne M. Chambron, timely filed a joint New York State Income Tax Resident Return for 1975 reporting total New York income of \$8,725.31. Petitioners excluded the sum of \$4,184.04 from total New York income, said amount consisting of wage income of \$4,550.00,

less adjustments to income of \$365.96. On their return petitioners indicated that they were residents of New York for the entire 1975 tax year.

2. On July 23, 1981, the Audit Division issued a Notice of Deficiency to petitioners for 1975, asserting that \$252.02 of personal income tax was due, together with interest of \$112.35, for a total allegedly due of \$364.37. At the hearing held herein the Audit Division conceded that the additional tax due for 1975 should be reduced to \$171.20, plus interest, due to the allowance of New York itemized deductions of \$2,313.67 in lieu of the New York standard deduction.

3. The alleged additional tax due for 1975 is based on the Audit Division's assertions that petitioners were domiciliaries and residents of New York State for the entire 1975 tax year and that the income excluded by petitioners from reported total New York income (see Finding of Fact "1", supra) was taxable to New York. Petitioners maintain that they changed their domicile and resident status to New York State in May, 1975; that the excluded income represents income earned in Ohio prior to their move to New York; and that said excluded income is not taxable to New York since it was earned in their nonresident period and was not derived from or connected with New York State sources.

4.(a) Prior to January 1, 1972, petitioners were domiciliaries and residents of the State of New York. On or about January 1, 1972, petitioner Joel C. Chambron accepted a position with Cars, Inc. in Washington, D.C. Petitioners relocated from New York State to Virginia, moving their mobile home from New York to a mobile home park in Virginia where they had leased a lot for a period of one year. Petitioners remained in Virginia until approximately July 1, 1972.

(b) On or about July 1, 1972, Cars, Inc. permanently transferred Mr. Chambron to its office in Birmingham, Alabama. Once again petitioners moved their mobile home, this time from Virginia to Alabama. Petitioners leased a lot in a mobile home park in Alabama for a period of one year. Petitioners also obtained Alabama drivers' licenses. Mr. and Mrs. Chambron remained in Alabama until approximately January 13, 1973.

(c) On or about January 13, 1973, petitioner Joel C. Chambron left the employ of Cars, Inc. and accepted a permanent position with a large chain of Chrysler-Plymouth automobile dealerships in Washington, D.C. Petitioners moved from Alabama to Fairfax, Virginia, where they leased an apartment¹ for a period of one year. Petitioners obtained Virginia drivers' licenses and also maintained bank accounts in Virginia. Mr. and Mrs. Chambron remained in Virginia until approximately January 14, 1974.

(d) On or about January 14, 1974, petitioner Joel C. Chambron left the employ of the Chrysler-Plymouth automobile dealerships due to the impending breakup of the chain by Chrysler-Plymouth. Mr. Chambron accepted a permanent position with an automobile dealership in Ravenna, Ohio. Petitioners moved from Fairfax, Virginia to Stow, Ohio, renting an apartment located at 2327 Graham Road from approximately February, 1974 through February, 1975. Effective March 1, 1975 petitioners moved into an apartment located at 2520 Colony Park Place, Stow, Ohio. Petitioners resided in the second apartment until sometime in May, 1975, at which time they left Ohio and returned to the Buffalo, New York area where they took up residence with relatives of Mrs. Chambron.

¹ Petitioners' mobile home was destroyed by a flood during their residency in Alabama.

(e) While living in Ohio petitioners obtained Ohio drivers' licenses, maintained bank accounts in Ohio and filed tax returns with the City of Stow, Ohio as residents of said city. They also filed a voluntary petition for bankruptcy in October, 1974, wherein they listed their address as Stow, Ohio. Petitioners returned to New York sometime in May, 1975 due to the fact that Mr. Chambron's employer in Ravenna, Ohio had gone out of business. The income excluded from petitioners' 1975 New York State tax return represents wage income earned by Joel C. Chambron in Ohio prior to his return to New York in May, 1975. From January 1, 1972 through May, 1975 petitioners owned no real property in New York, maintained no bank accounts in New York and were not registered to vote in New York.

CONCLUSIONS OF LAW

A. That petitioners were not domiciled in or taxable as residents of New York State for the first five (5) months² of 1975. Accordingly, petitioners' 1975 New York State personal income tax liability is to be recomputed on the basis that they were nonresidents of the State for the period January 1, 1975 to May 30, 1975 and residents of New York for the remainder of the year [Tax Law section 654 and 20 NYCRR Part 148].

B. That since petitioners had no income from New York State sources during the period of their nonresidence, they were not required to file a nonresident return for said period [see 20 NYCRR 148.1(b)].

² Petitioners were unable to provide the exact date of their move back to New York State in May, 1975. Since petitioners have the burden of proof [Tax Law section 689(e)], it is determined for the purposes of this decision that the change of domicile and resident status occurred on May 31, 1975.

C. That total New York income reported on petitioners' return (\$8,725.31) properly reflects the income earned by petitioners during the period of their New York State residency (May 31, 1975 through December 31, 1975). However, in the computation of New York taxable income, petitioners must apportion to the resident period New York itemized deductions (\$2,313.67) and the allowance for personal exemptions (\$2,400.00). In the instant matter, it is appropriate to apportion New York itemized deductions and personal exemptions based on a percentage determined by placing the number of months in the resident period (7) over the total number of months in the taxable period (12).

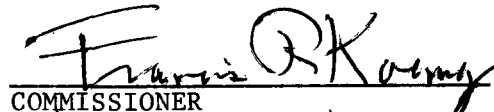
D. That the petition of Joel C. Chambron and Anne M. Chambron is granted to the extent indicated in Conclusions of Law "A", "B" and "C", supra; that the Audit Division is directed to recompute petitioners' 1975 liability consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

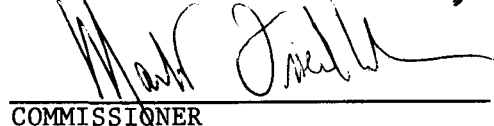
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER