

STATE TAX COMMISSION

In the Matter of the Petition
of
Anne D. Martin

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
1977.

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 Anne D. Martin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anne D. Martin
380 Riverside Dr.
New York, NY 10025

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 Paruch

James A. Hayward
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Anne D. Martin
380 Riverside Dr.
New York, NY 10025

Dear Mrs. Martin:

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	:	
ANNE D. MARTIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, Anne D. Martin, 380 Riverside Drive, New York, New York 10025, 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 1977 (File No. 34976).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1984 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's claim for resident tax credit for taxes paid to the State of New Jersey on a lump sum distribution.

FINDINGS OF FACT

1. Anne D. Martin (hereinafter petitioner) filed a New York State Income Tax Resident Return with her husband, Album C. Martin, for the year 1977 under filing status "married filing separately on one return". In conjunction therewith, petitioner filed a New York State and City of New York Separate Tax on Lump Sum Distributions schedule and a Claim for Resident Tax Credit whereon she claimed a credit of \$3,521.83 for taxes paid to the State of New Jersey on

a lump sum distribution. Said credit was carried over to petitioner's personal income tax return and used to reduce her New York tax liability.

2. On August 7, 1980 the Audit Division issued a Statement of Audit Changes to petitioner and her husband wherein petitioner's claimed resident tax credit was reduced to \$376.60 based on the following explanation:

"New York State does not allow a resident tax credit for taxes payable to another state on lump sum distributions.

The \$22,444.30 capital gains and \$9,143.97 ordinary income reported on Form IT-112R have been disallowed for the purpose of computing your resident tax credit.

Also, since the lump sum distribution income cannot be included when determining your resident tax credit, we have computed your New Jersey tax due excluding the lump sum distribution. Your resident tax credit cannot exceed the New Jersey tax payable on the limitation computed on Form IT-112R."

Accordingly, a Notice of Deficiency was issued against petitioner on April 1, 1981 asserting additional New York State personal income tax of \$2,343.68, plus interest of \$585.42, for a total due of \$2,929.10.

3. Petitioner claimed that she was advised in June, 1981 that the lump sum distribution was not taxable to New Jersey. She subsequently filed an amended New Jersey tax return but the refund claimed therein was denied since the period allowed for claiming a refund had previously expired.

4. The lump sum distribution at issue was derived from a profit sharing plan of her former New Jersey employer.

5. Petitioner argued that it is unfair that she be required to pay taxes to two states on the lump sum distribution.

CONCLUSIONS OF LAW

A. That section 601-C(a) of the Tax Law, as in effect during 1977, provided that:

"There is hereby imposed a separate tax for each taxable year, as determined in subsection (b), on the ordinary income portion of a lump sum distribution of every resident individual, estate and trust."

B. That section 601-C, as in effect during 1977, made no provision for the allowance of credits against the separate tax imposed on the ordinary income/capital gain portion of a lump sum distribution.

C. That section 620 of the Tax Law, which provides a credit for any income tax imposed by another state, made no provision during 1977 for allowance of a credit against the separate tax imposed on the ordinary income/capital gain portion of a lump sum distribution.

D. That section 620-A of the Tax Law provides for a credit against the separate tax. However, such section was added by the Laws of 1978 and is applicable to taxable years commencing after December 31, 1978.

E. That the Audit Division properly disallowed petitioner's claim for resident tax credit for taxes paid to the State of New Jersey on the lump sum distribution at issue.

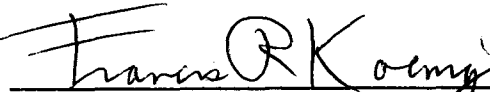
F. That the petition of Anne D. Martin is denied and the Notice of Deficiency dated April 1, 1981 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

JUL 31 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER