

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Judith Ann Ogrodnik : 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 :
1972.

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Judith Ann Ogrodnik, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

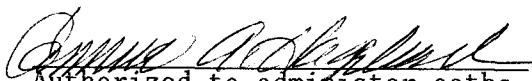
Judith Ann Ogrodnik
3131 Hwy 1, Sp 50
Arroyo Grande, CA 93420

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 March, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

March 9, 1984

Judith Ann Ogrodnik
3131 Hwy 1, Sp 50
Arroyo Grande, CA 93420

Dear Ms. Ogrodnik:

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	:	
JUDITH ANN OGRODNIK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the	:	
Year 1972.	:	

Petitioner, Judith Ann Ogrodnik, 3131 Hwy 1 SP 50, Arroyo Grande, California 93420, 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 1972 (File No. 16817).

On December 1, 1978, petitioner, Judith Ann Ogrodnik, advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission on the entire record contained in the file.

ISSUE

Whether petitioner was a "nonresident individual" within the meaning of Section 605 of the Tax Law for the year 1972.

FINDINGS OF FACT

1. Petitioner, Judith Ann Ogrodnik, timely filed a New York State income tax return for the year 1972.

2. On August 31, 1973, the Income Tax Bureau issued a Statement of Income Tax Due in the amount of \$47.30 on the grounds that the tax was incorrectly computed. Petitioner, on January 3, 1974, paid the tax due under protest. On

February 9, 1975, petitioner requested a refund of all taxes paid for the year 1972.

3. On January 12, 1976, the Income Tax Bureau issued a refund denial for the year 1972 on the grounds that the residences she resided in during 1972 did not constitute maintaining a permanent place of abode. Accordingly, the Bureau issued a Notice of Disallowance on February 24, 1976, in the amount of \$483.30 for the year 1972.

4. Petitioner was a domiciliary of New York State at the time of her induction into the United States Air Force in November, 1968. She remained on active military duty until she was discharged on March 1, 1976.

5. Petitioner was single and lived in base dormitories at Lackland Air Force Base in Texas until November, 1972 and at Hamilton Air Force Base in California from November, 1972 until a period after the year at issue. The dormitories were owned and maintained by the United States Air Force.

6. Petitioner, Judith Ann Ogrodnik, did not submit any information in reference to her military status or assignment during 1972. She did not submit a description of her quarters other than to describe them as base dormitories.

7. Petitioner maintained no permanent place of abode in New York State during 1972. She spent no time in New York State during 1972.

CONCLUSIONS OF LAW

A. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

B. That petitioner, Judith Ann Ogrodnik, was a domiciliary of New York State during 1972. In the absence of any special factors contained in the petition, the presumption must stand that a dormitory does not constitute a permanent residence. That petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that she maintained a permanent place of abode outside New York State during 1972. Judith Ann Ogrodnik was a resident of New York in 1972 within the meaning and intent of section 605(a) of the Tax Law and in accordance with 20 NYCRR 102.2(b).

C. That the petition of Judith Ann Ogrodnik is denied and the Notice of Disallowance dated February 24, 1972 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


MAR 09 1984



PRESIDENT



COMMISSIONER



COMMISSIONER