

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ronald Olsen : 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 :
1970.

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 March, 1984, he served the within notice of Decision by certified mail upon Ronald Olsen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald Olsen
5 Candlelight Dr.
Danbury, CT 06810

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.

David Parchuck

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

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

March 9, 1984

Ronald Olsen
5 Candlelight Dr.
Danbury, CT 06810

Dear Mr. Olsen:

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	:	
RONALD OLSEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioner, Ronald Olsen, 5 Candlelight Drive, Danbury, Connecticut 06810, 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 1970 (File No. 13817).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 2, 1978 at 9:00 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner, a New York domiciliary who resided in government housing on military installations and off-base housing outside New York State, was a resident for New York State income tax purposes within the meaning of Section 605 of the Tax Law.

II. Whether petitioner, by virtue of having a permanent change of station during the year in question, maintained a permanent place of abode outside the State of New York during such entire year.

FINDINGS OF FACT

1. Petitioner, Ronald Olsen, timely filed a New York State Income Tax Resident Return for 1970. On this return he reported his income from the United States Navy for the first four months of 1970, stating that he was a New York State resident from January 1, 1970 to April 30, 1970.

2. The Income Tax Bureau issued a Statement of Audit Changes in which petitioner's income was increased to include all income received from the United States Navy for the entire year 1970 based on the contention that petitioner did not meet all of the following qualifications and therefore was considered to be a resident of New York State for the entire year 1970:

- a. He maintains no permanent place of abode in this State during such year;
- b. He maintains a permanent place of abode elsewhere during such entire year, and
- c. He spends in the aggregate not more than thirty days of the taxable year in this State.

Accordingly, the Income Tax Bureau issued a Notice of Deficiency on October 29, 1973 in the amount of \$226.04 in income tax, plus \$34.43 interest, for a total due of \$260.47.

3. On May 30, 1974, petitioner filed an amended return reporting no tax due based on the contention that he met all three of the above qualifications.

4. Petitioner, Ronald Olsen, was a resident and a domiciliary of New York State in September, 1968 when he entered military service in the United States Navy.

5. Petitioner was a career serviceman and his marital status was single while in the Navy.

6. During January, 1970, petitioner was stationed in Texas and resided in military quarters.

7. From February, 1970 through April 30, 1970, petitioner was stationed at Naval Air Facility, El Centro, California, and resided in military quarters, described as one room with shower. After April 30, 1970, he rented an apartment off base in the town of El Centro, California and resided there for the rest of the taxable year.

8. From January 20, 1970 through February 20, 1970, petitioner took leave and/or vacation, but spent in the aggregate less than thirty days of 1970 in New York State.

9. The military assignments in Texas and California were permanent duty stations and petitioner's transfer orders were considered by the United States Navy as a permanent change of station orders.

10. During 1970, petitioner did not maintain a permanent place of abode in the State of New York.

11. Petitioner took no active part in community affairs as a private citizen or while he was in military service.

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, Ronald Olsen, was a domiciliary of New York State during 1970. Petitioner has failed to sustain the burden of proof imposed by

section 689(e) of the Tax Law to show that he maintained a permanent residence outside of New York State throughout 1970, in that he has failed to provide facts showing that his military quarters in which he spent a substantial portion of the year had the indicia of a permanent residence. Therefore, he did not maintain a permanent place of abode outside New York State during the entire year as required by 20 NYCRR 102.2(b). Ronald Olsen was a resident of New York State in 1970 within the meaning and intent of section 605 of the Tax Law and in accordance with 20 NYCRR 102.2(b).

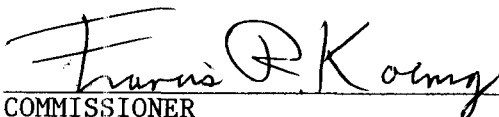
C. That the petition of Ronald Olsen is denied and the Notice of Deficiency dated October 29, 1973 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER