

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Melvin & Rosalind Chernok :

AFFIDAVIT OF MAILING

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 1979. :

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Melvin & Rosalind Chernok, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Melvin & Rosalind Chernok  
1315 Elm Ave.  
Brooklyn, NY 11230

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  
15th day of April, 1985.

David Parchuck

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

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

April 15, 1985

Melvin & Rosalind Chernok  
1315 Elm Ave.  
Brooklyn, NY 11230

Dear Mr. & Mrs. Chernok:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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	:	
MELVIN CHERNOK AND ROSALIND CHERNOK	:	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 1979.	:	

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Petitioners, Melvin Chernok and Rosalind Chernok, 1315 Elm Avenue, Brooklyn, New York 11230, 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 1979 (File No. 38508).

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 October 3, 1984 at 10:45 A.M. Petitioner Melvin Chernok appeared pro se and for his wife Rosalind Chernok. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether during the year 1979, petitioners were domiciled in New York State and New York City and either maintained a permanent place of abode in New York State and City, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York State and City, and were thus resident individuals under Tax Law section 605(a)(1) and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Petitioners, Melvin Chernok and Rosalind Chernok, filed a joint New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the year 1979 whereon they reported wage income of \$21,479.28.

2. On September 22, 1981, the Audit Division issued a Statement of Audit Changes to petitioners wherein, based on information received from the Internal Revenue Service, their total income was increased to conform to that as reported on their Federal return. Accordingly, a Notice of Deficiency was issued against petitioners on July 29, 1982 asserting additional New York State personal income tax of \$306.49, additional New York City personal income tax of \$94.05, plus interest of \$97.20, for a total due of \$497.74.

3. Melvin Chernok (hereinafter "petitioner") was employed in the construction industry during the year at issue and worked on job sites located in New York, New Jersey and Pennsylvania. On his 1979 New York return he reported only those wages derived from New York employment.

4. Petitioner alleged that he and his wife were not residents of New York State and City during the periods in 1979 in which he was employed in New Jersey and Pennsylvania. Accordingly, he claimed that the income derived from said states is not taxable to New York State and New York City.

5. Petitioner and his wife owned a home at 1315 Elm Avenue, Brooklyn, New York which they maintained throughout the entire taxable year 1979. Petitioners' children resided in this home during the entire year. Petitioner and his wife resided there during the period he was employed in New York.

6. During the periods in 1979 when petitioner was employed in either New Jersey or Pennsylvania, he and his wife lived in either a trailer camp or motel situated near the job site.

7. When questioned as to where he has voted in the last ten years, petitioner responded, "I voted in New York".

CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent. (20 NYCRR 102.2(d)(1)). A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time (20 NYCRR 102.2(d)(2)).

B. That petitioner and his wife were domiciled in the State and City of New York during the entire taxable year 1979.

C. That section 605(a) of the Tax Law provides, in pertinent part, that a resident individual means an individual:

"(1) Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State..."

That section T46-105.0(a)(1) of the Administrative Code of the City of New York provides a substantially similar definition for a resident individual of New York City.


D. That since petitioners were domiciled in the State and City of New York, maintained a permanent place of abode in the State and City of New York (their Brooklyn home) and maintained no permanent place of abode elsewhere they are deemed to have been resident individuals of New York State and New York City during the entire taxable year 1979.

E. That the petition of Melvin Chernok and Rosalind Chernok is denied and the Notice of Deficiency dated July 29, 1982 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985

  
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PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER