

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ivan Dunkley :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976.

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 February, 1985, he served the within notice of Decision by certified mail upon Ivan Dunkley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ivan Dunkley
1425 Brooklyn Avenue - Apt. 6D
Brooklyn, NY

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 February, 1985.

David Parchuck

James D. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ivan Dunkley :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for :
the Year 1976.

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 February, 1985, he served the within notice of Decision by certified mail upon Linda Singer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Linda Singer
Domenick J. Mizio
350 Broadway
New York, NY 10013

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
15th day of February, 1985.

David Parchuck

Annunzio A. Haydel
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 15, 1985

Ivan Dunkley
1425 Brooklyn Avenue - Apt. 6D
Brooklyn, NY

Dear Mr. Dunkley:

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: Petitioner's Representative
Linda Singer
Domenick J. Mizio
350 Broadway
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IVAN DUNKLEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles 22	:	
and 30 of the Tax Law for the Year 1976.	:	

Petitioner, Ivan Dunkley, 1425 Brooklyn Avenue, Apt. 6D, Brooklyn, New York 11210, 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 Article 30 of the Tax Law for the year 1976 (File No. 39199).

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 August 22, 1984 at 9:15 A.M. Petitioner appeared by Domenick J. Mizio, Esq. (Linda Singer, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Kevin Cahill, Esq. of counsel).

ISSUE

Whether, during the year 1976, petitioner was 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 was thus a resident individual under Tax Law sections 605(a)(1) and 1305(a)(1).

FINDINGS OF FACT

1. Ivan Dunkley (hereinafter "petitioner"), failed to file a New York State and New York City personal income tax return for the year 1976.

2. On February 11, 1982 the Audit Division issued a Statement of Audit Changes to petitioner wherein his 1976 New York State and New York City personal income tax liability was computed from information obtained from the Internal Revenue Service. Such information established that petitioner's 1976 Federal adjusted gross income was \$15,533.00. Accordingly, a Notice of Deficiency was issued against petitioner on May 13, 1982 asserting New York State personal income tax of \$687.41, New York City personal income tax of \$259.84, penalties of \$449.94 and interest of \$444.43, for a total due of \$1,841.62. Said penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file a 1976 personal income tax return and failure to pay the tax shown on the return, respectively.

3. During the hearing held herein the Audit Division withdrew the penalty asserted pursuant to section 685(a)(2) of the Tax Law. Its basis for such action was that said penalty could not be imposed where, as in the instant case, a personal income tax return was not filed.

4. Petitioner alleged that during 1976 he was employed in and was a resident of New Jersey from January 1 to sometime in July, after which he became a New York resident and was no longer employed. He contended that during his 1976 period of New York residence his income consisted solely of nontaxable disability payments. Accordingly, he argued that he has no New York State or New York City personal income tax liability for 1976.

5. In June, 1982, petitioner submitted an improperly executed affidavit wherein he claimed:

"1. That from 1960 till 1978 I resided at 129 North 15th Street, East Orange, New Jersey.

2. That on or about the year of 1979 I moved to 765 Lincoln Avenue, Brooklyn, New York where I resided for approximately a year.

3. In the year 1980 I moved to my present address which is 1425 Brooklyn Avenue, Brooklyn, New York."

In conjunction with said affidavit, petitioner submitted several 1977 documents (although 1976 is the year at issue) relating to a traffic accident. On each document his address was reported as 129 North 15th Street, East Orange, New Jersey. One such document was a State of New York - Department of Motor Vehicles, Order of Suspension or Revocation. Said document establishes that petitioner's New York State driver's license was suspended on September 21, 1977. Although said document was addressed to petitioner at his East Orange address, a copy was mailed to him at 1402 Brooklyn Avenue, Brooklyn, New York, 11210.

6. During the hearing held herein petitioner testified that:

a. He resided in East Orange, New Jersey for approximately eight years until July, 1976.

b. He was employed by New York Central Railroad in Ridgefield, New Jersey until July 1976, at a gross weekly salary of approximately \$175.00.

c. He became ill in July, 1976 and was admitted to St. John's Hospital in Brooklyn, New York for a period of 14 days.

d. His employment was terminated at the time he entered the hospital and other than a few hundred dollars in bank interest, his sole income during the remainder of 1976 consisted of disability payments.

e. On his discharge from the hospital, he moved for a short time into his wife's apartment at 765 Lincoln Avenue, Brooklyn, New York.

f. He had been separated from his wife for several years prior to 1976.

g. On his discharge from the hospital, he moved into his brother's apartment at 1402 Foster Avenue, Brooklyn, New York.

h. He used a Brooklyn, New York address on his 1976 Federal tax return since he was living in Brooklyn at the time the return was filed in 1977.

i. During the latter part of 1976 he moved his personal belongings from New Jersey to New York.

j. Prior to living in East Orange, New Jersey he lived in Manhattan, New York City.

Petitioner's testimony was at best vague and inconsistent. Moreover, he offered no documentation supporting his claim of change of residence in July, 1976.

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)).

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that he was a domiciliary of New Jersey during any part of taxable year 1976. That for New York City purposes, section 689(e) of Article 22 of the Tax Law is incorporated into Article 30 by section 1312(a). Accordingly, it must be held that petitioner was domiciled in the State and City of New York during such entire taxable year.

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 1305(a)(1) of Article 30 of the Tax Law provides a substantially similar definition of resident individual for New York City purposes.

D. That petitioner has failed to sustain his burden of proof to show that he had met the requirements provided in sections 605(a)(1) and 1305(a)(1) of the Tax Law.

E. That petitioner was a resident individual of New York State and New York City during the entire taxable year 1976.

F. That the petition of Ivan Dunkley is granted to the extent of removing the penalty asserted under section 685(a)(2) of the Tax Law from the deficiency (see Finding of Fact "3", supra), and except as so granted, said petition is, in all other respects, denied.

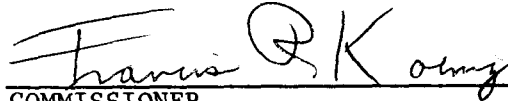
G. That except as so stated, the Notice of Deficiency dated May 13, 1982 is sustained, together with such additional penalty and interest as may lawfully be owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER