

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert D. Burns :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income
Tax under Article(s) 22 of the Tax Law :
for the Year 1980.

State of New York :

ss.:

County of Albany :

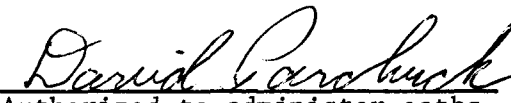
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 26th day of May, 1987, he/she served the within notice of Decision by certified mail upon Robert D. Burns the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

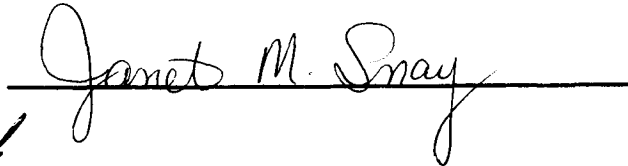
Robert D. Burns
1636 Welton St.
Denver, CO 80202

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
26th day of May, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of
Robert D. Burns :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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Tax under Article(s) 22 of the Tax Law for the :
Year 1980.

State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 26th day of May, 1987, he served the within notice of Decision by certified mail upon Michael Mahoney, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Mahoney
Peat, Marwick, Mitchell & Co.
74 North Pearl Street
Albany, NY 12207

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
26th day of May, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

May 26, 1987

Robert D. Burns
1636 Welton St.
Denver, CO 80202

Dear Mr. Burns:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Michael Mahoney
Peat, Marwick, Mitchell & Co.
74 North Pearl Street
Albany, NY 12207

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT D. BURNS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

Petitioner, Robert D. Burns, 1636 Welton Street, Denver, Colorado 80202, 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 1980 (File No. 62545).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman State Office Building Campus, Albany, New York on October 21, 1986 at 9:15 A.M., with all briefs to be filed by December 8, 1986. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Michael P. Mahoney, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner is entitled to claim a credit on his New York income tax return for income taxes paid to another state after he has ceased being a resident of New York.

FINDINGS OF FACT

1. In 1979 petitioner, a New York resident, was involved in an installment sale of property located in the State of Colorado. The installment gain was reported on petitioner's 1979 Federal income tax return, New York State resident income tax return and Colorado nonresident income tax return. Petitioner claimed a credit on his New York return for taxes paid to the State of Colorado.

2. In 1980, petitioner changed his residence from the State of New York to the State of Colorado.

3. For the year 1980, petitioner filed a New York State Income Tax Nonresident Return. On the New York return, petitioner reported that he was a resident of New York City from January 1, 1980 to June 30, 1980. Petitioner did not report any part of the gain on the installment sale of the property as subject to New York State income tax.

4. Petitioner filed a Colorado Part-Year Resident and Nonresident Individual Income Tax Return for the year 1980. On this return, petitioner reported that he was a resident of Colorado from July 1, 1980 through December 31, 1980. Petitioner also reported the 1980 portion of the installment gain on the sale of the property as subject to Colorado income tax for the period of his Colorado residency.

5. On April 5, 1985, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax in the amount of \$20,841.82 plus interest of \$10,436.10 for a balance due of \$31,277.92. The Statement of Audit Changes, which was previously issued, explained that since petitioner failed to file a surety bond or collateral as required by Tax Law § 654(c)(4), the Audit Division accrued the entire gain on the installment sale of the property.

6. At the hearing, petitioner acknowledged that he was required to accrue the gain on the installment sale of the property. However, he maintained that he should be able to reduce the tax on the installment sale reportable to New York by the amount of tax he would have had to pay Colorado if he had to accrue the entire gain on the Colorado income tax return for 1980.

CONCLUSIONS OF LAW

A. That Tax Law § 620(a) provides, in part, that "[a] resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state or by the District of Columbia, upon income derived both therefrom and subject to tax under this article." (Emphasis added.)

B. That petitioner is not entitled to a credit for tax imposed by Colorado since there is no showing that Colorado imposed a tax during the period of petitioner's New York residency.

C. That the petition of Robert D. Burns is denied and the Notice of Deficiency dated April 5, 1985 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 26 1987

Richard W. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Jell
COMMISSIONER