

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Walter & Judith Conley :  
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 :  
1979. :  
:

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State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Walter & Judith Conley, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter & Judith Conley  
34 Tower Rd.  
West Haven, CT 06516

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  
28th day of January, 1986.

David Parchuck

Connie A. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

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

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he served the within notice of Decision by certified mail upon Stephen P. Mayka, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen P. Mayka  
Lacy, Katzen, Ryen & Mittleman  
228 S. Plymouth Ave.  
Rochester, NY 14608

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  
28th day of January, 1986.

David Parchuck

Connie Hagelund

Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 28, 1986

Walter & Judith Conley  
34 Tower Rd.  
West Haven, CT 06516

Dear Mr. & Mrs. Conley:

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  
Stephen P. Mayka  
Lacy, Katzen, Ryen & Mittleman  
228 S. Plymouth Ave.  
Rochester, NY 14608  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WALTER CONLEY AND JUDITH CONLEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

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Petitioners, Walter Conley and Judith Conley, 34 Tower Road, West Haven, Connecticut 06516, 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 1979 (File Nos. 40817/40818).

A 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 June 18, 1985 at 1:15 P.M., with all briefs to be submitted by August 16, 1985. Petitioners appeared by Stephen P. Mayka, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner Walter Conley's claim for refund was properly denied on the basis that he was domiciled in the State of New York and either maintained a permanent place of abode in the State of New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than thirty days in the State of New York and was thus a resident individual under section 605(a)(1) of the Tax Law.

II. Whether petitioner Judith Conley's claim for refund was properly denied.

FINDINGS OF FACT

1. Petitioners, Walter Conley and Judith Conley, timely filed a New York State Income Tax Resident Return for the entire taxable year 1979 under filing status "Married filing separately on one return". Their address reported on such return was 404 Tifft Avenue, Horseheads, New York 14845. Annexed to such return was a New York State Claim For Resident Tax Credit whereon Mr. Conley claimed credit for taxes paid to the State of Ohio during 1979 of \$720.72. His separately filed 1979 Ohio return, which also bore the Horseheads, New York address, was filed under Ohio residency status "Nonresident". Attached to each return was a Wage and Tax Statement from General Electric Company (GE). The statement attached to his New York return was issued by GE in Schenectady, New York and reported his address as 404 Tifft Avenue, Horseheads, New York. The statement attached to his Ohio return was issued by GE in Cleveland, Ohio and reported his address as 40 Hughes Street, Youngstown, Ohio. Both returns were prepared by a New York certified public accountant.

2. On October 1, 1981, petitioners filed separate amended New York State returns for 1979. On Mr. Conley's amended return he claimed that his period of New York State residence during said year was from January 1 through March 31. On such return he reported only those wages earned prior to his purported change of residence. Originally claimed deductions and an exemption for his daughter were shifted to his wife's return. Said shift in the deductions and exemption formed the basis of Mrs. Conley's amended return, which was filed on a full year New York State residency basis. The refund claimed on Mr. Conley's amended return was \$2,439.08. The refund claimed on Mrs. Conley's amended return was \$290.82.

3. On July 26, 1982, the Audit Division issued a notice to each petitioner advising them that their respective claims for refund had been disallowed in full. The explanation given for the disallowance of Mr. Conley's claim was as follows:

"Refund claimed on amended return for 1979 is disallowed because no information submitted substantiates that a change of residence from New York State occurred in the tax year 1979."

The explanation given for the disallowance of Mrs. Conley's claim was as follows:

"Refund claimed on amended return for 1979 is disallowed because acceptance of such claim would result in a substantially higher tax liability on separate return of your husband, Walter Conley."

4. Prior to 1979 petitioners were domiciliaries and residents of the State of New York for many years. They owned a three bedroom ranch style house in Horseheads, New York, a suburb of Elmira. Since approximately 1968, Mr. Conley has been a full time employee of GE.

5. In or about February, 1979 GE advised Mr. Conley that it intended to close its Elmira plant. On or about April 1, 1979 Mr. Conley was transferred from his position of Manager of Labor Relations and Plant Safety at the Elmira plant to Manager of Plant Employee and Community Relations at GE's Youngstown, Ohio lamp plant.

6. Mr. Conley testified that upon his transfer to Ohio he moved to an apartment located at "40 Hughes Street, Youngstown, Ohio". His wife and daughter continued to reside in their Elmira, New York home. Said apartment purportedly contained a bedroom, kitchen and sitting room. Mr. Conley testified that he furnished the apartment with furniture brought from his Elmira, New York home as well as with new furniture purchased in Ohio. Said apartment was purportedly rented to petitioner on a month to month basis for "approximately \$75.00 a month". He testified that the rent was low because his landlady was

very old and he performed services for her such as taking out the garbage, cutting the grass and washing the windows. To evidence his rental of said apartment Mr. Conley submitted rent receipts from one Vivian Jennings. However, review of such rental receipts show that they were issued to Mr. Conley with respect to a "room" rented at "243 Norwood Avenue", Youngstown, Ohio, not with respect to an apartment allegedly maintained at 40 Hughes Street. Additionally, a letter from GE dated April 2, 1982, which was submitted by Mr. Conley, shows in the letterhead that 40 Hughes Street, Youngstown, Ohio was the address of the Incandescent Lamp Department of GE's Youngstown Lamp Plant, not Mr. Conley's apartment. Furthermore, a letter submitted by Mr. Conley dated August 30, 1983 from one J.L. Null, Manager of Plant Accounting, Ohio Lamp Plant, states in pertinent part that:

"In July, 1979 he (Mr. Conley) advised me he was living at 243 Norwood Avenue, Youngstown, Ohio which to my knowledge remained his address until he transferred to GE Credit Corporation, Stamford, Conn., effective June 16, 1980."

7. Since the documentary evidence submitted directly contradicts petitioners' testimony rendered with respect to the location and nature of Mr. Conley's Youngstown, Ohio dwelling (see Finding of Fact "6", supra), all further testimony rendered by petitioners with respect to their intent and actions is deemed to be incredible.

8. In June, 1980 Mr. Conley left the Youngstown, Ohio plant to accept a new job opportunity with GE in Stamford, Connecticut.

9. Mr. Conley alleged that both his transfer to Youngstown, Ohio and his subsequent transfer to Stamford, Connecticut were permanent in nature.

10. In the late summer of 1980, petitioners purchased a house in Connecticut. Their Elmira, New York house was sold in 1980 prior to said purchase.

CONCLUSIONS OF LAW

A. That 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 for only a limited time. (20 NYCRR 102.2(d)(2)).

B. That petitioner Walter Conley has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that he effected a change of domicile from New York to Ohio during 1979. Accordingly, Mr. Conley was domiciled in New York State during the entire taxable year 1979.

C. That section 605(a) of the Tax Law provides 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..."

D. That petitioner Walter Conley has failed to sustain his burden of proof to show that he has met the requirements provided in section 605(a)(1) of the Tax Law. Accordingly, it is hereby deemed that petitioner Walter Conley was a resident individual of New York State during the entire taxable year 1979.

E. That petitioner Walter Conley's claim for refund (amended return) is denied and the notice of disallowance in full of such claim, dated July 26, 1982, is sustained.




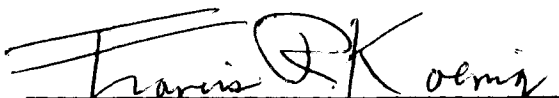
F. That petitioner Judith Conley's claim for refund (amended return) is denied and the notice of disallowance in full of such claim, dated July 26, 1982, is sustained.

DATED: Albany, New York

JAN 28 1986

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER