

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

October 7, 1986

Sheila M. Quadrini
H & SBn, G-1M 3d FSSG
FPO San Francisco, CA 96605

Dear Ms. Quadrini:

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SHEILA M. QUADRINI

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1980.

DECISION

Petitioner, Sheila M. Quadrini, H & SBn, G-1M 3d FSSG, FPO San Francisco, California 96605, 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. 49423).

On January 18, 1986, petitioner advised the State Tax Commission, in writing, that she desired to waive a hearing and to submit the case to the State Tax Commission, with all briefs and documents to be submitted by April 23, 1986. After due consideration of the entire file, the State Tax Commission renders the following decision.

ISSUES

I. Whether the income earned by petitioner, while in military service, was subject to New York State personal income tax.

II. Whether interest asserted to be due should be waived.

FINDINGS OF FACT

1. On April 13, 1981, petitioner, Sheila M. Quadrini, filed a New York State Income Tax Nonresident Return for the year 1980. Petitioner reported that the total New York State personal income tax due was \$278.00 and that \$141.00 was withheld in New York State tax. Consequently, petitioner reported a balance due of \$137.00. However, petitioner did not remit the balance due.

Petitioner attached to her return a statement which provided, in substance, that she did not maintain a permanent place of abode in New York during 1980, that she maintained a permanent place of abode outside of New York State during 1980 and that she did not spend more than thirty days in New York State during 1980.

2. On November 17, 1983, the Audit Division issued a Notice of Deficiency to petitioner asserting that petitioner had a deficiency of personal income tax in the amount of \$137.00, plus interest of \$42.55, for a total of \$179.55. The Statement of Audit Changes explained that petitioner was taxable as a resident of New York State since she did not maintain a permanent place of abode outside of New York State for the entire taxable year.

3. On October 14, 1979, petitioner entered into military service in the United States Marine Corps. Petitioner used her family's address in Hilton, New York as her home of record for military purposes.

4. Petitioner attended officer candidate school in Quantico, Virginia from October 14, 1979 through December 20, 1979. Upon completion of officer candidate school, petitioner was engaged in a second activity in Quantico, Virginia until June 19, 1980. In June, 1980, petitioner was permanently reassigned from Quantico, Virginia to the Marine Corps Air Station in Yuma, Arizona. However, before proceeding to Arizona, petitioner was ordered to attend a school in Parris Island, South Carolina from June 24, 1980 through July 25, 1980. On August 6, 1980, petitioner arrived in Yuma, Arizona where she remained for the balance of the year in issue.

5. Petitioner resided in bachelor officers' quarters while engaged in each of the foregoing assignments except during the period she attended officer

candidate school. These residences contained facilities which would normally be found in a dwelling such as accommodations for cooking and bathing.

6. When petitioner was permanently reassigned to the Marine Corps Air Station in Yuma, her possessions were forwarded to Yuma in anticipation of her arrival. In addition, a room was set aside for her at the bachelor officers' quarters in Yuma and all of petitioner's mail was forwarded to Yuma.

7. During the year 1980, petitioner was required to reside in bachelor officers' quarters.

8. Petitioner spent seventeen days in New York State in 1980.

CONCLUSIONS OF LAW

A. That during the year in issue, section 605 of the Tax Law provided, in part:

"(a) Resident individual. A resident individual means an individual:

- (1) who is domiciled in this state, unless (A) 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..."

(The Personal Income Tax Regulations provide that the permanent place of abode outside of New York State must be maintained for the entire year [20 NYCRR 102.2(b)].)

"(b) Nonresident individual. A nonresident individual means an individual who is not a resident."

B. That petitioner was a domiciliary of New York State during 1980.

C. That petitioner did not maintain a permanent place of abode outside of New York State for the entire year 1980. A place of abode is not deemed permanent if the abode is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2[e]). On the record presented, it appears that petitioner's stay for her assignments in Quantico, Virginia and Parris Island were of a temporary duration and for the accomplishment

of a particular purpose. Accordingly, petitioner did not maintain a permanent place of abode for the entire year in issue. Since petitioner did not meet all of the statutory criteria for treatment as a nonresident, she was taxable as a resident of New York for 1980 (see Matter of Thomas E. Mannle, Jr. and Ann G. Mannle, State Tax Commission, February 29, 1984).

D. That there is no provision in the New York State personal income tax law which permits interest to be waived.

E. That the petition of Sheila M. Quadrini is denied and the Notice of Deficiency, issued November 17, 1983, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1986

Rodriguez Alu
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER