

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Juan & Ana Rodriguez

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS 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 1977. :

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 17th day of January, 1986, he served the within notice of Decision by certified mail upon Juan & Ana Rodriguez, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Juan & Ana Rodriguez
446 48th St.
Brooklyn, NY 11220

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
17th day of January, 1986.

David Parchuck

William A. Hargrave

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 17, 1986

Juan & Ana Rodriguez
446 48th St.
Brooklyn, NY 11220

Dear Mr. & Mrs. Rodriguez:

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, 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

In the Matter of the Petition	:	
of	:	
JUAN RODRIGUEZ AND ANA RODRIGUEZ	:	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 1977.	:	

Petitioners, Juan Rodriguez and Ana Rodriguez, 446 48th Street, Brooklyn, New York 11220, 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 1977 (File No. 40628).

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 July 24, 1985 at 1:15 P.M. Petitioner Juan Rodriguez appeared pro se and for his wife Ana Rodriguez. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether during the year 1977, petitioners were domiciled in the State and City of New York and either maintained a permanent place of abode in the State and City of New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than thirty days in the State and City of New York, and were thus resident individuals under section 605(a)(1) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

II. Whether the penalties asserted should properly be abated.

FINDINGS OF FACT

1. Petitioners, Juan Rodriguez and Ana Rodriguez, failed to file New York State and New York City personal income tax returns for the year 1977.

2. On March 12, 1982, the Audit Division issued a Statement of Audit Changes to petitioners wherein they were held to be residents of the State and City of New York. Pursuant to said statement, their tax liabilities were computed "based on information furnished by the Internal Revenue Service...". Accordingly, a Notice of Deficiency was issued against petitioners on August 11, 1982 asserting New York State personal income tax of \$1,262.62, New York City personal income tax of \$420.69, penalties of \$799.56 and interest of \$702.75, for a total due of \$3,185.62. Said penalties were asserted for failure to file a return and failure to pay the tax determined to be due pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law (for New York State purposes) and sections T46-185.0(a)(1) and T46-185.0(a)(2) of the Administrative Code of the City of New York (for New York City purposes), respectively.

3. On petitioners' 1977 Federal return their address was reported as 374 13th Street, Brooklyn, New York.

4. In response to the aforestated Statement of Audit Changes, petitioners replied, on July 12, 1982, "I was not liable because I was not a resident of New York State." However, in apparent contradiction, they stated in their subsequently filed Perfected Petition that "I have always filed my tax returns and I believe that my State Income Tax return for 1977 was filed. However, I cannot located my copies... If I owe any money, I will pay it."

5. Petitioner Juan Rodriguez was born in Puerto Rico. In or about 1942 he moved to New York.

6. Prior to and during taxable year 1977 Mr. Rodriguez was employed as a seaman. The apartment at 374 13th Street, Brooklyn, New York was maintained by him throughout the entire year at issue.

7. Mr. Rodriguez alleged that his wife was a bona fide resident of Puerto Rico during 1977. He claimed that she lived in a rented apartment in Puerto Rico during such entire year. He claimed that he maintained the Brooklyn apartment only as a matter of convenience since he shipped out from New York.

8. Petitioner Juan Rodriguez stated during the hearing that if the taxes at issue are properly due he has no objection to paying them. However, he requested abatement of the penalties asserted since he was at sea and was unfamiliar with the tax laws of the State and City of 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)).

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that they were domiciled outside the State and City of New York during 1977. Accordingly, it must be held that petitioners were domiciled in New York State and City during said year.

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..."

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

D. That petitioners have failed to sustain their burden of proof to show that they had met all three exceptions provided in sections 605(a)(1) of the Tax Law and T46-105.0(a)(1) of the Administrative Code of the City of New York. Accordingly, petitioners are deemed to be resident individuals of the State and City of New York for the year 1977.


E. That petitioners have failed to establish that their failure to file returns and pay the taxes due for 1977 was due to reasonable cause. Accordingly, the penalties asserted are sustained.


F. That the petition of Juan Rodriguez and Ana Rodriguez is denied and the Notice of Deficiency issued August 11, 1982 is sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER