

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dolores Y. Straker : AFFIDAVIT OF MAILING

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 Years 1979 & 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 8th day of May, 1986, he/she served the within notice of Decision by certified mail upon Dolores Y. Straker the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dolores Y. Straker
120-14 192nd St.
St. Albans, NY 11412

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
8th day of May, 1986.

David Parchuck

Janet M. Snay

Authorized to administer oaths
pursuant to Tax Law section 174

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

May 8, 1986

Dolores Y. Straker
120-14 192nd St.
St. Albans, NY 11412

Dear Ms. Straker:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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	:	
	:	
DOLORES Y. STRAKER	:	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 Years 1979 and 1980.	:	

Petitioner, Dolores Y. Straker, 120-14 192nd Street, St. Albans, New York 11412, 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 years 1979 and 1980 (File No. 43939).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 10:45 A.M., with additional evidence to be submitted by January 24, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether, for the years 1979 and 1980, petitioner was domiciled in New York State and New York City and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus taxable as a resident individual 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.

FINDINGS OF FACT

1. On July 30, 1981, petitioner filed a New York State and City income tax resident return for 1979 wherein she indicated that she was a resident of the State and City from January 1, 1979 through August 31, 1979 and a nonresident for the balance of the year. On this same date, petitioner also filed a New York State income tax nonresident return for 1980 and a New York City nonresident earnings tax return for 1980. On both the State and City returns for 1980 petitioner reported no income as having been derived from or connected with State and City sources.

2. On May 7, 1982, the Audit Division issued a Statement of Audit Changes ("Statement") to petitioner for the years 1979 and 1980 which contained the following explanation:

"Based on information submitted and available it has been determined that you were a resident of New York State and the City of New York for each of the entire taxable years of 1979 and 1980.

As a resident you are subject to tax on income received from all sources, to the extent included in your Federal adjusted gross income and subject to specific modifications required by New York State Income Tax Law.

Temporary absences from New York State and the City of New York for the purpose of obtaining an education does (sic) not constitute a change of domicile."

The Audit Division recomputed petitioner's New York State and City personal income tax liability by increasing reported total New York income for 1979 and 1980 to an amount equal to the adjusted gross income reported on Ms. Straker's 1979 and 1980 Federal income tax returns (less any statutory modifications).

3. Based on the aforementioned Statement, the Audit Division, on January 26, 1983, issued a Notice of Deficiency to petitioner for 1979 and 1980 asserting

additional New York State and City tax due of \$1,568.00, plus penalty¹ of \$320.20 and interest of \$363.45, for a total due of \$2,251.65.

4. Prior to September 1, 1979, petitioner was employed as an Assistant Professor at York College in Jamaica, New York. Petitioner also maintained her personal residence in Jamaica, New York and considered herself a domiciliary of both the State and City of New York. Ms. Straker had been employed at York College since September of 1973 and had received her doctorate in philosophy in 1978.

5. In 1979, petitioner applied for and was granted a "fellowship leave" (more commonly known as "sabbatical leave") from York College. Petitioner's fellowship leave was at half pay, effective September 1, 1979 through August 31, 1980. Fellowship leave was granted for the purpose of research, improvement of teaching or other creative work in literature or the arts.

6. While on fellowship leave, petitioner conducted professional research as a visiting Research Assistant Professor of Education at the University of Illinois. Petitioner was offered this temporary position with the University of Illinois pursuant to a letter dated April 10, 1979, which stated as follows:

"We are delighted to be able to offer you a position at the Center for the Study of Reading for the 1979-1980 academic year. The terms of our offer are \$15,500 for the nine month academic year."

7. In late August, 1979, petitioner departed Jamaica, New York for Illinois. Petitioner vacated her apartment in New York and took with her as much of her personal belongings as possible. Those personal belongings which petitioner could not transport to Illinois were left in storage in New York.

1 Penalty was asserted pursuant to Tax Law §685(a)(1) and Administrative Code §T46-185.0(a)(1) for failure to file returns on time.

8. Once in Illinois, petitioner leased an apartment in Urbana, Illinois for the period September 1, 1979 through August 31, 1980. Petitioner also opened checking and savings accounts with the First National Bank of Champaign, Illinois.

9. While living and working in Illinois, petitioner's automobile remained registered in New York and petitioner also retained her New York driver's license and voter registration. Ms. Straker also kept a bank account open in New York, although there existed only a small balance in said account.

10. Although petitioner's position with the University of Illinois was a temporary one, the possibility existed that it could become permanent. At the time that petitioner left New York, she had hoped to obtain a permanent position with the University of Illinois. However, due to funding cutbacks, petitioner was unable to acquire a permanent position and her employment with the University of Illinois ended in August, 1980.

11. Although petitioner's fellowship leave from York College expired on August 31, 1980, Ms. Straker was not, at that point in time, interested in returning to said college. Accordingly, she applied for and received from York College a leave of absence without pay for the period September 1, 1980 through August 31, 1981.

12. Effective September 2, 1980, petitioner accepted a position with Educational Testing Service located in Princeton, New Jersey. Said position was described, pursuant to a letter dated June 20, 1980 from Educational Testing Service, as "...a one year appointment as a Visiting Associate Examiner in the Higher Education and Career Programs...".

13. In August, 1980, petitioner left Illinois and moved to Cranbury, New Jersey. Ms. Straker leased an apartment in Cranbury, New Jersey for a period

of one year and also opened a checking account and a savings account with a financial institution located in New Jersey. While living and working in New Jersey, petitioner's automobile remained registered in New York and petitioner also retained her New York driver's license and voter registration.

14. Due to a lack of flexibility in her work schedule at Educational Testing Service, petitioner tendered her resignation effective sometime in January, 1981. Petitioner cancelled the second half of her leave without pay from York College and returned to her teaching assignment at said college on February 1, 1981. Ms. Straker left New Jersey in January, 1981 and moved back to Jamaica, New York.

15. For the year 1979, petitioner filed an individual income tax return with the State of Illinois indicating that she was a resident of said state from September 1, 1979 through December 31, 1979. On said return petitioner reported the wage income earned from the University of Illinois and computed a tax due to Illinois of \$182.00. For the year 1980, petitioner filed an individual income tax return with the State of Illinois indicating that she was a resident of said state for the entire year. Petitioner also filed a 1980 income tax return with the State of New Jersey indicating that she was a nonresident of said state for the entire taxable year.

16. During the year 1980, petitioner did not spend more than 30 days within the State and City of New York, did not maintain a permanent place of abode within the State or City and did maintain a permanent place of abode outside the State and City.

17. From January 1, 1980 through August 31, 1980, petitioner, while still on fellowship leave, received half pay from York College amounting to \$7,325.83. In computing Federal adjusted gross income for 1980, petitioner excluded

\$3,600.00 of fellowship wages from gross income as an "...amount excludable as stipend under section 117G of the I.R. Code (12 months at \$300 per = \$3,600...)". Petitioner claimed a similar exclusion in 1979 which totalled \$3,744.00; however, the record herein does not disclose how this amount was computed. During the years 1979 and 1980 petitioner was on fellowship leave from York College a total of 4 months and 8 months, respectively.

18. At the hearing held herein petitioner presented no evidence or argument with respect to the penalty asserted for failure to file her 1979 and 1980 returns on time.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain her burden of proof [Tax Law §689(e) and Administrative Code §T46-189.0(e)] to show that she abandoned her domicile within the State and City of New York and acquired a domicile in either Illinois in 1979 or New Jersey in 1980. Accordingly, petitioner remained a domiciliary of both the State and City of New York for the years 1979 and 1980.

B. That for the year 1979, petitioner was domiciled in New York State and City, maintained a permanent place of abode in the State and City and also spent more than 30 days within the State and City. Accordingly, petitioner is taxable as a resident individual within the meaning and intent of Tax Law §605(a)(1) and Administrative Code §T46-105.0(a)(1).

C. That for the year 1980, petitioner, although a domiciliary of the State and City of New York, is taxable as a nonresident individual since she maintained a permanent place of abode outside New York, did not maintain a permanent place of abode in New York and spent not more than 30 days within the State and City [Tax Law §605(a)(1); Administrative Code §T46-105.0(a)(1)].

D. That pursuant to section 620 of the Tax Law petitioner is entitled, for the year 1979, to a resident tax credit of \$182.00 for taxes paid to the State of Illinois.

E. That the \$7,325.83 of wage income received by petitioner from York College in 1980 while on fellowship leave constituted income derived from or connected with State and City sources and is therefore taxable to petitioner as a nonresident individual. Tax Law §632 and Administrative Code §U46-2.0(a).

F. That during the years 1979 and 1980, petitioner, while on fellowship leave from York College, was not a candidate for a degree and was therefore entitled to exclude only \$300.00 per month for each month while on such fellowship leave. Internal Revenue Code §117(b)(2)(B) and Treasury Regulation §1.117-2(b)(2). Accordingly, petitioner is entitled to exclude \$1,200.00 (\$300.00 x 4) of fellowship wage income in 1979 and \$2,400.00 (\$300.00 x 8) of fellowship wage income in 1980.

G. That petitioner has failed to sustain her burden of proof to show that the untimely filing of her returns for 1979 and 1980 was due to reasonable cause and not willful neglect. Accordingly, the penalty asserted due for failure to timely file returns is sustained.


H. That the petition of Dolores Y. Straker is granted to the extent indicated in Conclusions of Law "C" and "D", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated January 26, 1983 consistent

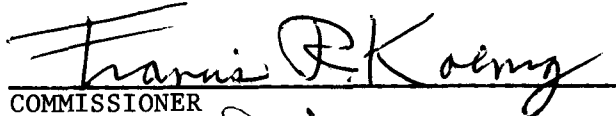
with the conclusions rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 08 1986


PRESIDENT


COMMISSIONER


COMMISSIONER