

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
John & Mary Castagna :

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 1979.

State of New York :

ss.:

County of Albany :

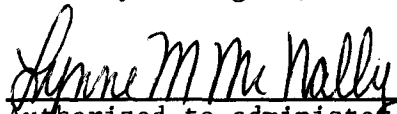
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of August, 1987, he/she served the within notice of Decision by certified mail upon John & Mary Castagna the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John & Mary Castagna
200 West Sarah St.
Milford, PA 18337

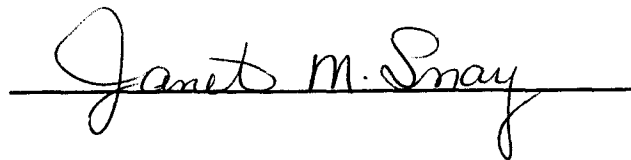
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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 August, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John & Mary Castagna :

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 1979. :

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

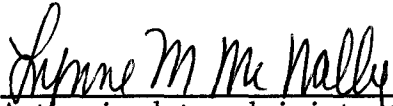
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of August, 1987, he served the within notice of Decision by certified mail upon Hilton L. Sokol, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

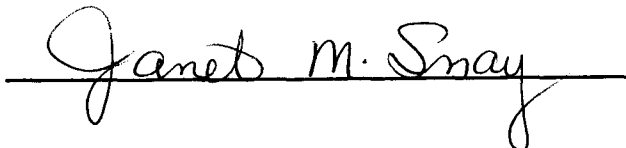
Hilton L. Sokol
Miller, Ellin & Company, CPA's
450 Seventh Ave.
New York, NY 10123

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 August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

August 28, 1987

John & Mary Castagna
200 West Sarah St.
Milford, PA 18337

Dear Mr. & Mrs. Castagna:

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) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Hilton L. Sokol
Miller, Ellin & Company, CPA's
450 Seventh Ave.
New York, NY 10123

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioners, John Castagna and Mary Castagna, 200 West Sarah Street, Milford, Pennsylvania 18337, 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 No. 54767).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1987 at 1:15 P.M. Petitioners appeared by Miller, Ellin & Company (Hilton L. Sokol, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether, during the year 1979, petitioners were domiciled in New York 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 thirty days in New York, and were thus resident individuals under Tax Law § 605(a)(1).

FINDINGS OF FACT

1. Petitioners, John and Mary Castagna, filed a U.S. Individual Income Tax Return for the year 1979 wherein they elected a filing status of "Married filing joint return (even if only one had income)". Petitioners listed their address as being on East 8th Street in Brooklyn, New York.

2. Mr. Castagna filed a Commonwealth of Pennsylvania Individual Income Tax Return for the year 1979. On this return, Mr. Castagna reported his address as being on Sawkill Road in Milford, Pennsylvania.

3. Petitioners did not file a New York State income tax return for the year 1979.

4. On June 15, 1984, the Audit Division issued a Notice of Deficiency to petitioners asserting a deficiency of New York State and New York City personal income tax for the year 1979 in the amount of \$7,688.13, plus penalty of \$3,651.86 and interest of \$3,660.87, for a balance due of \$15,000.86. The Statement of Audit Changes, which had previously been issued, explained, in essence, that petitioners were subject to tax as residents of New York. In addition, the penalties were asserted pursuant to Tax Law §§ 685(a)(1) and 685(a)(2) for, respectively, failure to file a tax return and failure to pay the amounts shown as tax on a return required to be filed.

5. Prior to the hearing, the Audit Division consented to a reduction in the amount of tax asserted to be due based upon allowing itemized deductions of \$2,833.00 and a resident tax credit for taxes paid to the Commonwealth of Pennsylvania of \$1,264.00. As adjusted, the Audit Division asserts that there is a deficiency of New York State personal income tax in the amount of \$4,488.00 and New York City personal income tax in the amount of \$1,809.00.

6. Mr. and Mrs. Castagna were married in 1947. Following their marriage, they began living in a two-family house on East 8th Street in Brooklyn, New York. At this time, the house was apparently owned, at least in part, by Mr. Castagna's mother-in-law.

7. Prior to the year in issue, Mr. Castagna was president of a publishing company which was located in New York City. In 1975, the company filed for bankruptcy and ceased operating.

8. Mr. Castagna was unable to secure other employment immediately following the bankruptcy of the publishing company. Furthermore, at or about this time, Mr. Castagna became estranged from his wife.

9. In 1977, Mr. Castagna secured employment with Sparcomatic Corporation ("Sparcomatic") in Milford, Pennsylvania. At this time, Mr. Castagna began residing in an apartment in Milford and Mrs. Castagna began residing with her brother in New Jersey.

10. During 1977, Mr. Castagna's mother-in-law became very ill. Consequently, Mr. Castagna made frequent trips to New York City to provide assistance. In the evenings, Mr. Castagna returned to Milford and Mrs. Castagna returned to her brother's home in New Jersey.

11. The apartment which Mr. Castagna occupied in Milford was leased by Sparcomatic from a third party. Sparcomatic, in turn, sub-leased the apartment to Mr. Castagna. It was agreed between Mr. Castagna and Sparcomatic that an amount of \$250.00 per month for rent would be deducted from a year-end bonus or an equivalent amount would be applied as a reduction in a salary raise.

12. In or about the end of 1977, Mr. Castagna's mother-in-law died. Thereafter, the ownership of the house on East 8th Street in Brooklyn passed by inheritance to Mrs. Castagna and her brother and the furniture therein was given away to neighbors.

13. After the death of Mr. Castagna's mother-in-law, Mr. Castagna's son and daughter-in-law moved into the apartment which Mr. and Mrs. Castagna

formerly occupied. Since Mr. Castagna's son was a student and had little income, Mr. Castagna paid all of the bills associated with the residence.

14. During 1979, Mr. Castagna worked as the chief engineer of Sparcomatic. In this capacity, he designed and developed products. He also presented products at shows. This position required that Mr. Castagna travel approximately one-half of the year to various locations in the United States and the Far East.

15. During 1979, Mr. Castagna spent approximately ten days in New York visiting relatives on holidays.

16. During the year in issue, Mr. Castagna had savings and checking accounts with banks in Pennsylvania. He also had a brokerage account with a firm in Wilkes-Barre, Pennsylvania. Mrs. Castagna maintained a small savings account in a bank in New York.

17. During the year in issue, Mr. Castagna's automobile was registered in Pennsylvania. However, he continued to utilize a New York driver's license. Mr. Castagna explained that he kept his New York driver's license because his license was renewed automatically by his wife or his son. Furthermore, Mr. Castagna drove very little.

18. Mr. Castagna traveled a great deal and therefore it was his practice to use his Brooklyn apartment's address to receive mail. This enabled Mr. Castagna's son to be available to open mail and, if necessary, pay bills.

19. In a letter dated December 18, 1984, Mr. Castagna explained that, upon retirement, he planned on returning to New York.

CONCLUSIONS OF LAW

A. That John and Mary Castagna were domiciliaries of New York prior to the year in issue. Once a domicile is established, it continues until the

person moves to a new location with the bona fide intention of making his new location his fixed and permanent home (20 NYCRR 102.2[d][2]).

B. That petitioners have failed to sustain their burden of proof of establishing that in 1979 they intended to make Pennsylvania their new domicile (Tax Law § 689[e]). In reaching this conclusion, it is noted that Mr. Castagna paid all of the bills on an apartment in New York, that Mrs. Castagna maintained a small savings account in New York, that Mr. Castagna kept his New York driver's license, that Mr. Castagna received his mail at an apartment in New York and that Mr. Castagna intended to return to New York when he retired.

C. That, during the year 1979, Tax Law § 605(a)(1) provided, in part, that:

"[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".

D. That since Mr. Castagna paid all of the bills on an apartment in which he previously resided and at which he received his mail, he maintained a permanent place of abode in New York. Therefore, the Audit Division correctly determined that Mr. Castagna was subject to tax as a resident of New York.

E. That the Audit Division is directed to modify the Notice of Deficiency in accordance with Finding of Fact "5".


F. That the petition of John Castagna and Mary Castagna is granted only to the extent of Conclusion of Law "E"; that the Notice of Deficiency, issued

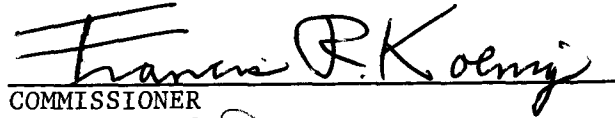
June 15, 1984, is to be modified accordingly; and that the petition is otherwise denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 28 1987


PRESIDENT


COMMISSIONER


COMMISSIONER