

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Laszlo & Rochelle Stern : 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, New York City :
Personal Income Tax under Chapter 46, Title T :
of the Administrative Code of the City of New :
York and Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1979 :
and 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 23rd day of April, 1987, he/she served the within notice of Decision by certified mail upon Laszlo & Rochelle Stern the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Laszlo & Rochelle Stern
20 Oak Road
New Milford, CT 06776

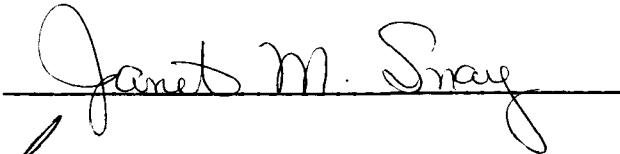
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
23rd day of April, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

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for Redetermination of a Deficiency or for	:	
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York and Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1979	:	
and 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 23rd day of April, 1987, he served the within notice of Decision by certified mail upon Randy B. Blaustein, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

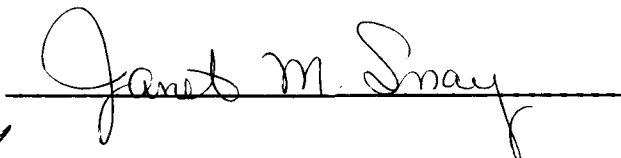
Randy B. Blaustein
Siegel, Mendlowitz & Rich
310 Madison Ave.
New York, NY 10017

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
23rd day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 23, 1987

Laszlo & Rochelle Stern
20 Oak Road
New Milford, CT 06776

Dear Mr. & Mrs. Stern:

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, 722 & 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 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

Petitioner's Representative:
Randy B. Blaustein
Siegel, Mendlowitz & Rich
310 Madison Ave.
New York, NY 10017

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LASZLO STERN AND ROCHELLE STERN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law, New York City	:	
Personal Income Tax under Chapter 46, Title T	:	
of the Administrative Code of the City of New	:	
York and Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1979	:	
and 1980.	:	

Petitioners, Laszlo Stern and Rochelle Stern, 20 Oak Road, New Milford, Connecticut 06776, 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, New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York and unincorporated business tax under Article 23 of the Tax Law for the years 1979 and 1980 (File No. 56904).

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 October 30, 1986 at 10:45 A.M., with all briefs to be submitted by December 30, 1986. Petitioners appeared by Randy B. Blaustein, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether the adjustments made by the Audit Division as the result of a field audit were proper.

II. Whether Laszlo Stern and Rochelle Stern were resident individuals of New York State and City during the years 1979 and 1980.

FINDINGS OF FACT

1. Petitioners, Laszlo Stern and Rochelle Stern, timely filed a New York State Income Tax Nonresident Return with City of New York Nonresident Earnings Tax for each of the years 1979 and 1980 whereon Laszlo Stern (hereinafter "petitioner") reported business income derived from his activities as a photographer. On his 1979 return petitioner reported net profit of \$22,281.00, of which 55% or \$12,255.00 was allocated to New York State for personal income tax and unincorporated business tax purposes and to New York City for nonresident earnings tax purposes. On his 1980 return petitioner reported net profit of \$23,437.00, of which 60% or \$14,062.00 was allocated to New York State and City for the aforesated purposes.

2. (a) On July 19, 1984, the Audit Division issued two statements of audit changes to petitioner and his wife. One such statement, which was issued with respect to unincorporated business tax, incorporated the following adjustments, which were based on a field audit:

	<u>1979</u>	<u>1980</u>
"Additional Income per Cash Availability	\$13,140.00	\$ 7,593.00
Car expense - Car payments	1,149.00	574.00
Entertainment	2,099.00	1,305.00
Office Supplies - Cable TV	106.00	-0-
Rent expense - CT. Studio	500.00	500.00
Auto expense - personal use	422.00	416.00
Utilities - personal use		608.00
Ordinary gain on sale of equipment		<u>600.00</u>
Total adjustments	\$17,416.00	\$11,596.00"

Said statement also increased petitioner's business allocation percentages from 55% to 93.23% for 1979 and from 60% to 93.47% for 1980.

(b) The other statement, which was issued with respect to New York State and City personal income taxes, held petitioner and his wife to be statutory residents of New York. As such, their total reported Federal adjusted gross

income was held to be taxable. The total business adjustments of \$17,416.00 (1979) and \$11,596.00 (1980) were added to Federal adjusted gross income of \$25,951.00 (1979) and \$18,642.00 (1980) to arrive at corrected New York income of \$43,367.00 (1979) and \$30,238.00 (1980).

3. Based on the aforesaid statements of audit changes, four notices of deficiency were issued against petitioner and his wife on September 27, 1984 as follows:

1 - Asserted tax deficiency of \$5,086.97 for 1979 and 1980 New York State personal income tax plus 1979 New York City personal income tax.

2 - Asserted tax deficiency of \$341.69 for 1980 New York City personal income tax.

3 - Asserted tax deficiency of \$1,082.45 for 1979 unincorporated business tax.

4 - Asserted tax deficiency of \$734.80 for 1980 unincorporated business tax.

All four notices of deficiency asserted negligence penalties and interest.

4. Petitioner and his wife executed two consent forms which served to extend the period of limitation upon assessment of the taxes at issue to any time on or before April 15, 1985.

5. During the audit it was discovered that petitioner's cash draw was less than amounts deposited into his various accounts. Accordingly, a cash availability audit was performed which resulted in the aforesaid adjustments for additional income of \$13,140.00 for 1979 and \$7,593.00 for 1980.

6. Although petitioner and his wife were not domiciled in New York, they were held to be statutory New York residents for the years at issue based on a review of petitioner's personal checking account, which disclosed checks for a New York City apartment located at 99-15 66th Avenue, Forest Hills, New York 11375. Review of his checks showed minimum house expenditures for his New

Milford, Connecticut residence and studio. It was further determined that his child attended school in Queens, New York and that petitioner had a listing at the aforesaid address in both the 1979-1980 and the 1980-1981 Queens telephone directories. It was also determined that petitioner spent more than 183 days of each year at issue in New York.

7. Petitioner's business allocation percentages used for 1979 and 1980 were estimated. He conducted business from two locations; a studio in his Connecticut home and a rented studio located at 157 West 44th Street, New York, New York.

8. Rochelle Stern was not involved in petitioner's unincorporated business.

9. No evidence, documentary or otherwise, was submitted to establish where the audit results were erroneous or improper.

10. Petitioner's representative's position was that the Audit Division failed to show specific business transactions where petitioner's income was omitted or understated. Although petitioner's representative was allowed a one month period subsequent to the hearing within which to submit additional information and a memorandum of law, he failed to do so.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of Article 22 of the Tax Law, former section T46-189.0(e) of the Administrative Code of the City of New York and section 722(a) of Article 23 of the Tax Law (which incorporates section 689[e] into Article 23), to show where any of the adjustments made by the Audit Division were erroneous or improper.

B. That section 605(a) of the Tax Law provides, in pertinent part that:

"A resident individual means an individual:

* * *

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state...."

C. That for New York City purposes, former section T46-105.0(a)(2) of the Administrative Code of the City of New York provides a definition for "city resident individual" which contains essentially the same requirements as section 605(a)(2) of the Tax Law.

D. That petitioner and his wife have failed to sustain their burden of proof to show that they were not resident individuals of New York State and City during the years 1979 and 1980.


E. That the two notices of deficiency for unincorporated business tax are cancelled with respect to Rochelle Stern.

F. That the petition of Laszlo Stern and Rochelle Stern is denied and, except as provided in Conclusion of Law "E", supra, the four notices of deficiency issued September 27, 1984 are sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 23 1987


PRESIDENT


COMMISSIONER


COMMISSIONER