

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
William E. & Kathleen Sultan :

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 1975.

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 20th day of July, 1987, he/she served the within notice of Decision by certified mail upon William E. & Kathleen Sultan the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William E. & Kathleen Sultan
Sultan Lane
Schodack Landing, NY 12156

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
20th day of July, 1987.

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

July 20, 1987

William E. & Kathleen Sultan
Sultan Lane
Schodack Landing, NY 12156

Dear Mr. & Mrs. Sultan:

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM E. SULTAN and KATHLEEN SULTAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, William E. Sultan and Kathleen Sultan, Sultan Lane, Schodack Landing, New York 12156, 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 1975 (File No. 61010).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W. A. Harriman State Office Building Campus, Albany, New York on February 27, 1987 at 10:00 A.M. Petitioner, William E. Sultan, appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether, during the year 1975, petitioner William E. Sultan was domiciled in New York State and either maintained a permanent place of abode in New York State, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York State, and was thus a resident individual under Tax Law § 605(a)(1).

FINDINGS OF FACT

1. Petitioners, William E. Sultan and Kathleen H. Sultan, filed a U.S. Individual Income Tax Return for 1975 wherein they selected a filing status of married filing joint return.

2. Petitioners did not file a New York State income tax return for the year 1975.

3. On February 26, 1985, the Audit Division issued a Notice of Deficiency to petitioners, asserting a deficiency of personal income tax in the amount of \$4,728.62, plus penalty of \$2,439.56 and interest of \$4,616.44, for a balance due of \$11,784.62. The Statement of Audit Changes, which was issued November 9, 1984, explained that there was no record of petitioners' having filed a New York State income tax return for the year 1975. Therefore, tax liability was computed on the basis of the available Federal information. The statement also explained that the penalties were asserted pursuant to Tax Law § 685(a)(1) for failure to file a tax return on or before the prescribed date, Tax Law § 685(a)(2) for failure to pay the amount shown as tax on a return required to be filed and Tax Law § 685(c) for underpayment of estimated tax.

4. Mr. Sultan was born and raised in New York.

5. Prior to the year in issue, Mr. Sultan resided with his wife in Schodack Landing, New York and worked as a truck driver.

6. In or about June or July 1975, Mr. Sultan was divorced.

7. During the year in issue, Mr. Sultan's employment as a truck driver resulted in his spending most of his time outside of New York. Mr. Sultan would either sleep in his truck or in a motel. He would eat at restaurants.

8. After his divorce, Mr. Sultan, for purposes of convenience, continued to receive mail at his former wife's home. He would also receive mail at the office of a trucking company in Montana.

9. During those periods of time when Mr. Sultan returned to New York, he would stay at his former wife's house.

10. At the hearing, Mr. Sultan requested that Mrs. Sultan be relieved of any liability for the tax asserted to be due.

CONCLUSIONS OF LAW

A. That during the year in issue, Tax Law § 605(a)(1) defined a resident individual as an individual

"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."

B. That since Mr. Sultan was domiciled in New York and did not maintain a permanent place of abode elsewhere, he was subject to tax as a resident of New York (Tax Law § 605[a][1]).


C. That since petitioners filed a joint Federal return, they were required to file a joint New York income tax return unless they elected to file separate New York income tax returns on a single form (Tax Law § 651[b][2]). Since no election was made to file separate New York tax returns, petitioners' liability is joint and several and there is no basis to cancel the asserted deficiency with respect to Kathleen Sultan.

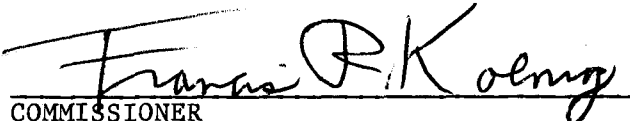
D. That the petition of William E. Sultan and Kathleen Sultan is denied and the Notice of Deficiency, dated February 26, 1985, is sustained.

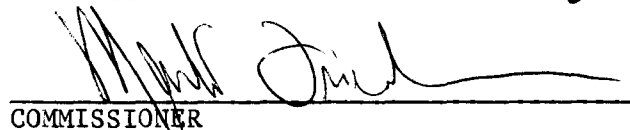
DATED: Albany, New York

STATE TAX COMMISSION

JUL 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER