

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Harvey J. & Alesia H. Edwards : AFFIDAVIT OF MAILING

for Redetermination of Deficiencies or for :
Refunds of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Nonresident Earnings Tax under Chapter 46, :
Title T of the Administrative Code of the City :
of New York for the Year 1982.

State of New York :

ss.:

County of Albany :

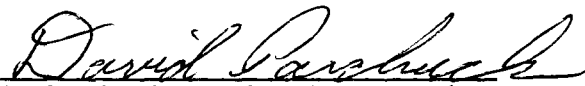
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 6th day of April, 1987, he/she served the within notice of decision by certified mail upon Harvey J. & Alesia H. Edwards the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

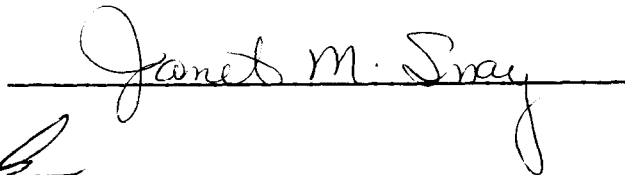
Harvey J. & Alesia H. Edwards
515 East 85th Street, Apt. #2E
New York, NY 10028

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
6th 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 6, 1987

Harvey J. & Alesia H. Edwards
515 East 85th Street, Apt. #2E
New York, NY 10028

Dear Mr. & Mrs. Edwards:

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 and 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
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

HARVEY J. EDWARDS AND ALESIA H. EDWARDS

for Redetermination of Deficiencies or for
Refunds 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 1982.

DECISION

Petitioners, Harvey J. Edwards and Alesia H. Edwards, 515 East 85th Street, Apt. #2E, New York, New York 10028, filed a petition for redetermination of deficiencies or for refunds 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 1982 (File No. 56802).

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 December 2, 1986 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in and taxable as residents of New York State and New York City for the entire 1982 tax year.

FINDINGS OF FACT

1. Petitioners herein, Harvey J. Edwards and Alesia H. Edwards, timely filed a New York State and New York City resident income tax return for 1982 wherein they elected a filing status of married filing separately on one

return. On page one of their return, petitioners computed their respective total New York incomes in the following manner:

	<u>Husband</u>	<u>Wife</u>
Total income	\$22,526.21	\$19,362.85
New York adjustments	<u>(22,526.21)</u>	<u>(21,725.55)</u>
Total New York income	-0-	-0-

The New York adjustments were explained on page two of petitioners' return as "non NY non-resident income".

2. On March 9, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1982 which contained, inter alia, the following explanation:

"Information available indicates that you were a resident of New York State for the entire year. Therefore, all sources of income including the nonresident income is includible on your return."

Petitioner Harvey J. Edwards' total New York income was increased by the Audit Division to \$22,771.95, while Mrs. Edwards' total New York income was increased to \$19,609.60.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on July 20, 1984, issued two notices of deficiency to petitioners for the year 1982. One notice, which represented tax allegedly due from Mrs. Edwards, determined additional tax of \$839.58, plus penalty and interest. The other notice, which represented tax allegedly due from Mr. Edwards, assessed additional tax of \$1,568.52, plus penalty and interest.

4. Prior to 1980, petitioners were domiciliaries of New York State residing in Rochester, New York. In 1980, petitioners moved to Boston, Massachusetts where Mr. Edwards took employment with the Council for Northeast Economic Action and Mrs. Edwards became an associate dean at the University of Massachusetts. Petitioners sold their home in Rochester, New York and closed out all

their bank accounts in New York. Upon their arrival in Massachusetts, petitioners leased an apartment in said state, registered to vote, opened bank accounts, obtained Massachusetts drivers' licenses and registered their automobile in Massachusetts.

5. Sometime in 1982, petitioners' daughter, a promising ballet student, was accepted into the School of American Ballet which was located in New York City. Acceptance into said school represented an excellent opportunity for petitioners' daughter to further her ballet career.

6. In order to allow their daughter the opportunity to study at the School of American Ballet, petitioner Alesia H. Edwards and her daughter moved to New York City on September 6, 1982. They initially stayed with friends in New York City until an apartment was leased at 160 East 91st Street, New York, New York effective October 1, 1982. The lease was executed by both petitioners because Mrs. Edwards had not yet found employment in New York and the landlord therefore required that Mr. Edwards also become a party to said lease.

7. Once in New York, Mrs. Edwards registered to vote and she also opened a joint checking account with her daughter. Mrs. Edwards eventually took a job with Catalyst for Women, Inc. located in New York City.

8. Petitioner Harvey J. Edwards remained living and working in Boston, Massachusetts for all of 1982. Mr. Edwards did not join his family in New York until July of 1983; however, he regularly visited his wife and daughter in New York. The primary reason Mr. Edwards did not move to New York with his family was due to the fact that he did not want to relinquish his employment in Boston, Massachusetts until such time as it was determined that his daughter was fully committed to her ballet career and that she wished to continue her studies at the School of American Ballet in New York City. Mr. Edwards had no

contractual obligation with his employer in Massachusetts and could have tendered his resignation at any time. Mr. Edwards maintained an apartment in Massachusetts for the entire 1982 tax year, was registered to vote in Massachusetts, had a Massachusetts driver's license, had his automobile registered in Massachusetts and maintained bank accounts in said state.

9. Petitioner Harvey J. Edwards performed no services for his employer within the State or City of New York, nor did he earn any income from New York sources during 1982. Petitioner Alesia H. Edwards, prior to September 6, 1982, earned no income from New York State or City sources. After September 6, 1982, Mrs. Edwards earned New York wage income of \$2,192.30; however, said income is offset by a New York business loss of \$724.20 and a New York moving expense deduction of \$1,728.00. Mrs. Edwards had \$209.20 of New York State and City income tax withheld from her wage income.

CONCLUSIONS OF LAW

A. That petitioner Alesia H. Edwards acquired a domicile within the State and City of New York effective September 6, 1982. Since Mrs. Edwards' total New York income for 1982 was a negative amount, no tax is due for said year and she is entitled to a refund of the \$209.20 of tax withheld from her wages.

B. That petitioner Harvey J. Edwards has established that he remained a domiciliary of the State of Massachusetts for all of 1982 and that he did not acquire a New York domicile on September 6, 1982 when his spouse and daughter moved to New York. Since Mr. Edwards had no income from New York sources, no tax is due for 1982.

C. That the petition of Harvey J. Edwards and Alesia H. Edwards is granted; that the two notices of deficiency dated July 20, 1984 are cancelled

in full; and that petitioner Alesia H. Edwards is to be refunded \$209.20, plus interest.

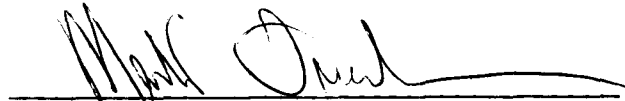
DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER