

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :

of :

CHRISTOPHER AND CHURMA-ANNE SYLVESTER : DETERMINATION
DTA NO. 817937

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 17, Title 11 of the Administrative Code of the City of New York for the Year 1994. :

Petitioners, Christopher and Churma-Anne Sylvester, 13400 Doty Ave., #11, Hawthorne, California 90250, 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 17, Title 11 of the Administrative Code of the City of New York for the year 1994.

Petitioners and the Division of Taxation consented to have the controversy determined on submission without a small claims hearing. The Division of Taxation submitted documents and a letter brief. Petitioners' reply brief was required to be filed by May 2, 2002, which date began the three-month period for the issuance of this determination. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Peter B. Ostwald, Esq., of counsel).

After reviewing the documents and brief, Allen Caplowaith, Presiding Officer, renders the following determination.

ISSUE

Whether the Division of Taxation properly determined that both petitioners were resident individuals of the State and City of New York during 1994 and accordingly subject to tax on all income, regardless of where it was derived from.

FINDINGS OF FACT

1. On November 28, 1997, the Division of Taxation (“Division”) issued a Statement of Proposed Audit Changes to petitioners, Christopher and Churma-Anne Sylvester, whereon New York State personal income tax of \$1,150.00 and New York City personal income tax of \$685.00 was determined to be due for the year 1994 based on the following explanation:

We do not have a record of a 1994 New York State income tax return on file for you. You did not reply to our previous letters asking about your New York return.

Section 6103(d) of the Internal Revenue Code allowed us to get information from the Internal Revenue Service. This information shows you filed a federal income tax return using a New York State address.

We used the information from your federal return and computed your tax as a New York resident. The starting point for computing your New York tax is federal adjusted gross income. We allowed subtractions to income and any appropriate child care credit and earned income credit based on the federal information.

If the New York standard deduction was greater than your allowable itemized deductions it was allowed as follows:

- \$9,500 - Married filing joint or qualifying widow(er)
- 7,000 - Head of Household
- 6,000 - Single
- 4,750 - Married filing separate return
- 2,800 - Dependent filer

Since the address on your federal return shows your residence was in New York City, we have also computed City of New York resident tax.

We will allow additional payments if your 1994 tax withheld from wages or estimated tax payments are greater than the amounts shown on this bill. Please furnish a wage and tax statement or canceled check showing a larger amount.

We have added a penalty for late filing at 5% per month up to the maximum of 25% (section 685(a)(1) of the New York State Tax Law).

We have added a negligence penalty of 5% as an addition to tax (section 685(b)(1) of the New York State Tax Law).

In addition to the 5% negligence penalty, an amount equal to 50% of any interest due on a deficiency or portion of a deficiency attributable to negligence or intentional disregard of the Tax Law has been imposed (section 685(b)(2) of the New York State Tax Law).

Interest is required by section 684(a) of the New York State Tax Law.

Review of the tax computation thereon shows that no withholding tax payments or estimated tax payments were allowed in computing the tax determined to be due.

2. On January 22, 1998, the Division issued a Notice of Deficiency to petitioners asserting New York State personal income tax for 1994 of \$1,150.00, New York City personal income tax for 1994 of \$685.00, plus penalties of \$816.64 and interest of \$454.68, for a total due of \$3,106.32.

3. On April 23, 1998, petitioners filed a joint New York State Resident Income Tax Return for the year 1994. On this return they claimed a resident tax credit of \$307.00 for taxes purportedly paid by Mrs. Sylvester to the State of California in 1994. They also claimed credit for New York State taxes withheld of \$694.00 and New York City taxes withheld of \$582.00. Review of Mr. Sylvester's 1994 Wage and Tax Statement from his New York employer, Record Town Inc., shows New York State taxes withheld of \$694.48 and New York City taxes withheld of \$405.86. On this statement, Mr. Sylvester's address was reported as 677 Hemlock St., Brooklyn, New York. Review of Mrs. Sylvester's 1994 Wage and Tax Statement shows that her employer was G G F & G Currency, Inc., 10007 Hawthorne Blvd., Inglewood, California 90304.

Mrs. Sylvester's address was reported thereon as 1738 W. 145th Street, Apt. D, Gardena, California 90274. Said statement shows that California state income tax of \$130.80 was withheld and "SDI" local income tax of \$175.53 was withheld.

4. Subsequently, petitioners filed a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services ("BCMS"). After receipt of the request by BCMS, the Division's representative issued a letter to petitioners on September 9, 1998, which stated, in pertinent part, as follows:

I have reviewed the income tax file and Request for Conciliation Conference received in this matter. We are proposing the following adjustments to our notice.

You have been allowed credit for taxes withheld as shown on your wage and tax statement(s).

You may be allowed a credit against New York State tax for tax paid on income earned in another state, a local government within another state or the District of Columbia. To claim the credit, you must file Form IT-112R, Claim for Resident Tax Credit, and a copy of the tax return you filed with the other state or local taxing jurisdiction.

5. Since no reply was received from petitioners in response to the above letter and other similar correspondence, the conferee issued a Conciliation Order on December 29, 1999 which reduced petitioners' 1994 New York State and City tax deficiency from \$1,835.00 (\$1,150.00 + \$685.00) to \$734.66. As stated in the aforesaid letter, this reduced tax deficiency was computed by allowing credit against the deficiency for Mr. Sylvester's New York State and City taxes withheld of \$694.48 and \$405.86, respectively.

6. Thereafter, petitioners filed a petition for a hearing with the Division of Tax Appeals wherein it was alleged that "Christopher Sylvester was a resident and his wife, Churma-Anne was not a resident of New York. Thus he could have filed a married filing separate return, the

tax amount of which is less than the amount proposed by State of New York, Department of Taxation and Finance.”

7. Annexed to the petition was a copy of a 1994 Resident Income Tax Return, Form IT-200, which was submitted to BCMS on March 20, 2000. On this return, which was filed solely in the name of Christopher Sylvester and under filing status “Married filing separate return,” Mr. Sylvester computed a total balance due of \$137.00, which he paid.

8. Petitioner, Churma-Anne Sylvester submitted a letter wherein she argued that she neither lived, nor worked in New York State during 1994. She also submitted a copy of the 1994 California Resident Income Tax Return she purports to have filed. This copy was received by the Division of Tax Appeals on April 1, 2002. It is not known whether this unsigned and undated copy, whereon Mrs. Sylvester reported her filing status as “Married filing separate return,” was actually filed with the California taxing authorities. Review of this return shows a computed 1994 California tax liability of \$110.00.

CONCLUSIONS OF LAW

A. Petitioners failed to file a New York State personal income tax return for 1994. Accordingly, it was proper for the Division to compute petitioners’ liability based on Federal information. When petitioners submitted evidence establishing their entitlement to a credit against the deficiency asserted for New York State and City taxes withheld, such credit was granted and accordingly, the deficiency was reduced.

B. Petitioners allege that Mrs. Sylvester was not a New York State resident individual during 1994. They argued that she lived and worked in California during 1994, and accordingly, she was a resident of that state. While it is true that Mrs. Sylvester’s 1994 Wage and Tax Statement reports California addresses for both her and her employer, this factor alone,

without any evidence or testimony respecting the nature of her employment, living arrangements and travel is insufficient to establish that she was indeed a California resident. Mrs. Sylvester was required to submit evidence of her claimed California resident status which she failed to do. Accordingly, it is held that petitioners, Christopher and Churma-Anne Sylvester, were both residents of the State and City of New York during the entire year 1994.

C. Alternatively, in order to receive the benefit of a resident tax credit against the deficiency herein, Mrs. Sylvester was required to establish that she filed a 1994 California return as well as the amount of her California tax liability for 1994. On the copy of the California return received on April 1, 2002, she showed a computed tax liability of \$110.00. However, this amount does not tie into the stated California tax liability computed and reported on petitioners' April 23, 1998 New York return of \$307.00. It appears evident that the \$307.00 credit claimed is the total of state and local taxes withheld on her Wage and Tax Statement rather than a computed California tax liability for 1994. This being the case, it seems apparent that a 1994 California return, if in fact filed at all, would not have been filed until sometime after April 23, 1998.

Since Mrs. Sylvester failed to show that she had actually filed a 1994 California tax return, she is not properly entitled to a resident tax credit offset against her New York State and City deficiency.

D. The petition of Christopher and Churma-Anne Sylvester is denied and the Notice of Deficiency dated January 22, 1998, as modified by the Conciliation Order of December 29,

1999, is sustained. Additionally, it is noted that credit is to be applied against the modified deficiency for the \$137.00 payment made on March 20, 2000 (*see*, Finding of Fact “7”).

DATED: Troy, New York
August 1, 2002

/s/ Allen Caplowaith
PRESIDING OFFICER