

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND AND HILDA REILLY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year ~~(xxxxxx Period)~~ 1973.:

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Raymond & Hilda Reilly

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Raymond Reilly
250 N.E. 20th Street
Boca Raton, Florida 33431

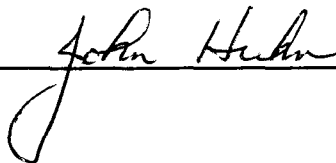
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

17th day of April, 1978







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

April 17, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. & Mrs. Raymond Reilly
250 N.E 20th Street
Boca Raton, Florida 33431**


Dear Mr. & Mrs. Reilly:

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 ~~(8)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chyrywat
Hearing Examiner**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RAYMOND AND HILDA REILLY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioners, Raymond and Hilda Reilly, 250 N.E. 20th Street, Boca Raton, Florida 33431, 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 1973 (File No. 12323).

On November 28, 1977, Petitioners advised the State Tax Commission, in writing, that they desired to waive a formal hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether petitioners changed their residence during 1973 and, if so, when did the change of residence occur.

II. If petitioners changed their residence during 1973, in which period, whether the residence or nonresidence period, could they claim a deduction for a casualty loss which occurred on July 17, 1973.

FINDINGS OF FACT

1. Petitioners, Raymond and Hilda Reilly, timely filed a New York State personal income part-year resident tax return for 1973. They subsequently filed an amended tax return for said year. On both tax returns, petitioners indicated that their period of New York State residence was from January 1, 1973 to July 6, 1973. The amended return filed by petitioners served to reduce itemized deductions to the amount incurred in the claimed resident period and to eliminate from adjusted gross income, certain income earned during the nonresident period in Florida. The itemized deductions in both the original and amended tax returns included a casualty loss in the amount of \$7,021.00.

2. The Income Tax Bureau contended that the casualty loss occurred in the nonresident period and, therefore, it was not deductible on the resident period tax return. On June 30, 1975, it issued a Notice of Deficiency for the year 1973 in the amount of \$122.08 in personal income tax, plus \$11.06 in interest, for a total due of \$133.14.

3. Petitioners contended that it was their intention when they moved to Florida to determine whether they wanted to spend their retirement years in a state other than New York, or to return to New York. They further contended that they made their decision to become Florida residents at a date subsequent to the casualty loss.

4. Petitioners sold their New York home on July 6, 1973 and moved to Florida on July 7, 1973. Petitioners purchased a home in Florida on August 15, 1973, applied for Florida driver's license on September 26, 1973 and registered to vote in Florida on December 15, 1973. Petitioners did not return to New York State.

5. Petitioners' household goods were retained in a warehouse in New York. On July 17, 1973 as the result of a fire, the household goods were completely destroyed. On July 20, 1973, petitioners were informed of the loss while in Florida by Allied Van Lines, Inc., which requested that petitioners complete insurance claim forms.

CONCLUSIONS OF LAW

A. That petitioners, Raymond and Hilda Reilly, effected a change of domicile to Florida on July 7, 1973 and were nonresidents of New York State for the period beginning July 7, 1973, in accordance with the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.3.

B. That since petitioners were nonresidents on the date when the casualty loss occurred, the deduction could not be claimed in the resident period tax return in accordance with the meaning and intent of section 654 of the Tax Law and 20 NYCRR 148.5.

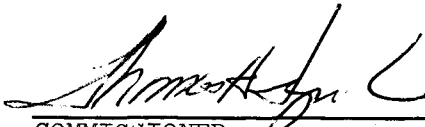
C. That the petition of Raymond and Hilda Reilly is denied and the Notice of Deficiency issued June 30, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER