

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Samuel & Leah Restler :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1971. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of April, 1980, he served the within notice of Decision by certified mail upon Samuel & Leah Restler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel & Leah Restler
5530 N. Ocean Blvd.
Delray Beach, FL 33444

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1971. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of April, 1980, he served the within notice of Decision by certified mail upon Stanley K. Gaines the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Stanley K. Gaines
225 W. 34th St.
New York, NY 10001

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 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
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

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

April 11, 1980

Samuel & Leah Restler
5530 N. Ocean Blvd.
Delray Beach, FL 33444

Dear Mr. & Mrs. Restler:

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, 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stanley K. Gaines
225 W. 34th St.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAMUEL RESTLER and LEAH RESTLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971.

Petitioners, Samuel Restler and Leah Restler, 5530 North Ocean Blvd., Delray Beach, Florida 33444, 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 1971 (File No. 13623).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1978 at 2:45 P.M. Petitioners appeared by Stanley K. Gaines, CPA. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioners were resident individuals of New York State under the Tax Law for 1971 and, if so, for what part of the year.

FINDINGS OF FACT

1. Petitioners, Samuel Restler and Leah Restler, timely filed a joint New York State nonresident return for 1971, giving a residence address in Delray Beach, Florida. Petitioners allocated Mr. Restler's income to New York by multiplying his salary income by the factor 33/235, which represented the number of days he claimed to have worked in New York (33) over the number of days he claimed to have worked during 1971 (235).

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes to petitioners, stating therein that it had been determined that they had changed residence as of September 1, 1971; therefore, the Income Tax Bureau concluded that 8/12th's of petitioners' income, deductions and exemptions were attributable to a period when they were New York State residents. The deficiency stated was \$3,416.04, plus interest of \$612.94, for a total due of \$4,028.98.

3. On June 3, 1975, petitioners filed a petition for redetermination of the alleged deficiency or for refund of personal income tax.

4. For forty years, petitioner Samuel Restler was a traveling salesman for a New York association of merchants and manufacturers. He customarily spent his winters in Florida. He lived with his wife in a home they owned in Rockville Centre, New York until 1969. He then listed the house for sale and spent his non-traveling time in Florida. On August 18, 1970, petitioners purchased a condominium in Delray Beach, Florida. Paid utility bills for October, November and December of 1970 indicate that petitioners utilized services at the condominium in the last quarter of 1970.

5. On November 10, 1971, petitioners, Samuel Restler and Leah Restler, executed and filed with the Clerk of Circuit Court, Palm Beach County, Florida, a "Declaration of Domicile and Citizenship" attesting that as of September 1, 1971, they had completed one year of bona fide residence in the State of Florida. They evinced an intention to register to vote in Florida from their stated local address. Chapter 97.041 of the Laws of Florida regarding qualifications and registration of electors then required the completion of one year's bona fide residence as a qualification to register.

6. Petitioner Samuel Restler spent more than thirty days in New York State in 1971, but none of this time was spent in the residence in Rockville Centre. No evidence was presented to show when and how many days he spent in New York in 1971.

7. No conclusive evidence was submitted to show when the petitioners disposed of their New York residence.

CONCLUSIONS OF LAW

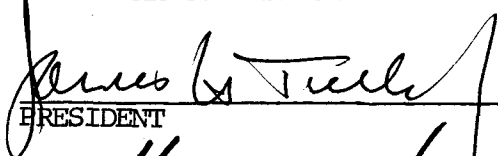
A. Petitioners, Samuel Restler and Leah Restler, were domiciled in New York prior to September 1, 1971. They also maintained a permanent place of abode in New York while domiciled in New York and Mr. Restler admitted to spending 33 days in New York during 1971. Accordingly, petitioners were resident individuals of New York within the meaning of section 605(a) of the Tax Law from January 1, 1971 through August 31, 1971.

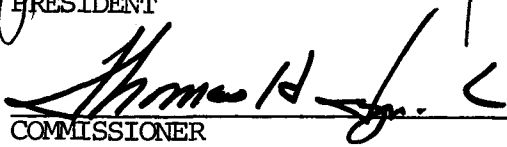
B. That the law does not provide for proration of income and itemized deductions. However, petitioners have not shown that the figures as computed by the Income Tax Bureau are incorrect. Accordingly, the petition of Samuel Restler and Leah Restler is denied and the Notice of Deficiency is sustained.

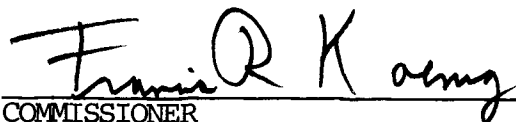
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER