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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determination**A-2**King, Kenneth A.*

TO: Commissioners Murphy, Palestin & Macduff

FROM: Mr. Schapiro

SUBJECT: KENNETH A. KING

Article 16 of the Tax Law  
for the Year 1956

SOLOMON J. BERLAD

Article 16 of the Tax Law  
for the Year 1957

*(Copy also in this folder  
under*

*Berlad, Solomon J.)*

The two unrelated cases heard before me contain similar factual situations and issues of law. The precise question is whether or not the taxpayers were residents during the taxable years in issue.

Both taxpayers were members of the Armed Forces during the respective years involved and were domiciliaries of the State of New York having prior to their entry in the Armed Forces been domiciled in this State. During the respective years involved the taxpayers had no place of abode in New York State, Berlad having five years earlier given up his apartment in his in-laws home, and King having rented his New York home to tenants, a factual situation similar to that found in Matter of Ryan v. Chapman, 273 App. Div. 99. Neither of the taxpayers spent 30 days or more in New York State during the year in issue.

Since the taxpayers were domiciliaries of the State of New York but maintained no permanent place of abode in this State or spent more than 30 days in New York State during the year in issue, the question as to whether or not each of the taxpayers maintained a permanent place of abode without the State must be answered.

Each of the taxpayers during the year in issue was stationed for the first portion of the year, at least four months in duration, on an Army base without this State and lived there together with wife and children in quarters maintained and furnished by the United States Government. During the latter portion of the year, each of the taxpayers was transferred to another Army installation without the State, but lived with wife and children in private premises rented by the taxpayer.

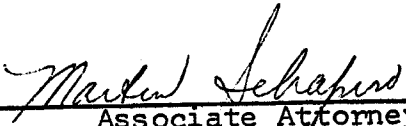
Although the case of Ryan, supra, held that the maintenance of living accommodations outside of an Army post, not furnished or maintained by the United States Army was a permanent place of abode, the exact question of whether or not living on a base in quarters maintained and furnished by the United States Government

constituted a permanent place of abode, was not answered. It has been the consistent policy of the State Tax Commission to hold that such accommodations were temporary quarters and did not constitute a permanent place of abode.

It has been argued by the taxpayers that at least for that portion of the year in which the taxpayers lived in apartments rented by them outside of an Army base and which apartments were not furnished by the United States Government, the taxpayers maintained a permanent place of abode without the State and accordingly were not residents for a portion of the taxable year.

The State Tax Commission, however, has consistently held that the exception to the definition of the word "resident" in section 350(7) of the Tax Law was never intended to apply to persons domiciled in this State who did not maintain a permanent place of abode without the State throughout the entire taxable year. Since the taxpayer domiciliaries did not maintain a permanent place of abode throughout the entire taxable year, I have prepared proposed determinations holding that the taxpayers were residents of the State of New York.

Kindly return the file after disposition.

  
Associate Attorney

MS:ca  
Enc.

February 16, 1966 (March 2, 1966)

  
Approved

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**  
**OF**  
**KENNETH A. KING**  
**FOR REVISION OR REFUND OF PERSONAL INCOME**  
**TAXES UNDER ARTICLE 18 OF THE TAX LAW FOR**  
**THE YEAR 1956**  
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A New York State personal income tax resident return under Article 18 of the Tax Law having been filed by the taxpayer for the calendar year 1956; a timely application for revision or refund having been subsequently filed by the taxpayer on the ground that the taxpayer was a nonresident during that year; a hearing having been held in connection therewith on December 20, 1957 at the office of the State Tax Commission, 88 Centre Street, New York, N. Y. before Martin Schapiro, Esq., Hearing Officer, at which hearing the taxpayer appeared personally and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That the taxpayer was a member of the Armed Forces of the United States during the entire taxable year.
- (2) That prior to his entry into the Armed Forces of the United States the taxpayer resided with his family in New York City and was a domiciliary of the State of New York.
- (3) That from January 1, 1956 through July 24, 1956 the taxpayer under military orders was stationed at a California Army base; that during said time the taxpayer lived at a military post in quarters furnished and maintained by the United States Government.
- (4) That during the remaining portion of said year the taxpayer was transferred under Army orders to Newport, Rhode Island

where he lived with his wife and child in a private rented home.

(5) That no time during the year in issue did the taxpayer maintain a permanent place of abode in this State nor spend more than 30 days within this State.

(6) That section 350(7) of the Tax Law provides in part:

"The word 'resident' applies only to natural persons and includes any person domiciled in the state, except a person who, though domiciled in the state, maintains no permanent place of abode within the state, but does maintain a permanent place of abode without the state, and who spends in the aggregate not to exceed thirty days of the taxable year within the state." (Emphasis Supplied)

Based upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That during 1956 the year involved, the taxpayer was domiciled within the State of New York.

(B) That quarters maintained and furnished by the United States Government in which the taxpayer and his family lived through a portion of the taxable year did not constitute a permanent place of abode within the intent and meaning of section 350(7) of the Tax Law.

(C) That the taxpayer did not maintain a permanent place of abode without the State for the entire taxable year; that the taxpayer, therefore, as a domiciliary of the State is subject to tax under Article 16 of the Tax Law for the entire taxable year.

(D) That therefore the taxes paid by the taxpayer for the year 1956 are correct and are legally due and owing, and

the taxpayer is not entitled to any revision or refund of taxes paid for such year.

DATED: Albany, New York on this 11th day of March, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner