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*Income Tax Determinations*  
**BUREAU OF LAW  
 MEMORANDUM**

*A-2  
 Gatley, Bruce W.*

**TO: Commissioners Murphy, Macduff and Conlon**

**FROM: Alfred Rubinstein, Hearing Officer**

**SUBJECT: Application of Bruce W. Gatley for  
 Revision or Refund of Personal Income  
 Taxes under Article 16 of the Tax Law  
 for the Year 1959**

A hearing on the above-entitled application was held before me at the office of the State Tax Commission, 80 Centre Street, New York, New York, on November 21, 1966. The appearances and exhibits were as noted on the transcript.

The issue involved is whether taxpayer was a resident of New York during the year 1959.

Taxpayer was assessed (Assessment No. AB-052207) \$189.48 on his failure to file a return for 1959, and contends that during such year he maintained a permanent place of abode in California where he was domiciled, and maintained no permanent place of abode in New York.

In 1951, taxpayer, a resident and domiciliary of New York, was inducted into military service. On discharge in 1955, he returned to his home in Thornwood, New York and accepted a job as a field representative for General Precision Laboratory of Pleasantville, New York. His duties were to train purchasers to operate his employer's electronic equipment, at the place of installation, or at other places convenient to the customers. In 1955 his employer sent him to California (where a branch office was located), and thereafter until 1963 he was in the States of Washington, North Dakota, Georgia, New York and in Guam and Japan on assignments. During his peregrinations, taxpayer found it necessary to live at or near the various sites of his work assignments. His residence address as given to his employer and carried on the employer's payroll records was, at all times, including 1959, his home at Thornwood, New York, the place where he lived when he was inducted into the service; to which he returned on his discharge and to where he ultimately returned in 1963 after completing his assignment in Japan. He returned to his Thornwood home with his bride whom he had married in Japan, and shortly thereafter set up a marital home in Chappaqua, New York. Although he claimed to be a resident of California, his automobile was registered in the State of Washington, he used a Washington driver's license and he

had attended Washington State University. He was on assignments in Seattle and Spokane, Washington from 1958 to April 1959; in Riverside and Sacramento, California from April 1959 to October 1959 and in Japan from October 1959 until 1963. His Federal income tax return for 1959 was filed from an A.P.O. address in Japan.

Section 350 of the Tax Law defines a resident as a person who is domiciled in the State, and excepts a person who, though domiciled in the State, maintains a permanent place of abode without the State, maintains no permanent place of abode within the State and spends no more than 30 days in the State. Reg. 20 NYCRR 269.1(a)(1) provides that a domiciliary who maintains a permanent place of abode within the State is a resident. Reg. 20 NYCRR 269.2(a) provides that to effect a change of domicile, there must be (a) intent to change, (b) actual removal, and (c) acquisition of a new abode. Reg. 20 NYCRR 269.3 provides that a permanent place of abode need not be owned by the individual so long as it is a permanent dwelling place. Policy Manual, Article 501 recognizes dual residence so that an individual may be a New York resident even if considered a resident by another state; Article 502 provides for retention of New York domicile by an individual who is inducted into the armed forces and further provides that during such period of induction he is not free to change his domicile; Article 503 provides that a domiciliary who maintains a permanent place of abode in the State is a resident, and need not be within the State, at all, and further provides (citing Opinion of Deputy Commissioner and Counsel, dated July 24, 1941) that to "maintain" a permanent place of abode requires the taxpayer to occupy or keep it effective. Whether the taxpayer contributes to the cost of maintenance is merely an evidentiary factor in determining the question of residence.

At the time of his induction into the armed forces the taxpayer was domiciled in the State and had a permanent place of abode at the home of his parents in Thornwood, New York. I am of the opinion that at all times thereafter, up to and including the entire year of 1959, he retained such domicile and permanent place of abode, whether he contributed to the cost of maintenance or not. His employment required extensive travel and his temporary stays outside the State were not of a nature so as to indicate acquisition of a new domicile or abode and abandonment of the former ones. His employer sent him out from New York and kept his New York address as his home on its records. His income tax withholding forms were addressed to his home in New York, and mail so addressed was delivered to him. He now claims to have been a resident of California for 1959, but he lived in that

state only from April to October dividing his stay between two cities 400 miles apart, at which he had work assignments, while his car and driver's license were of Washington issue. Every place he lived at from the commencement of his employment up to and including 1959, with the exception of his home in New York, was the site of a work assignment, and no evidence was furnished to show any intent on taxpayer's part to change his domicile from New York, the state to which he ultimately returned.

Accordingly, I am of the opinion that taxpayer was a resident of the State during 1959 and that the assessment should be sustained.

The determination of the Tax Commission should be substantially in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

~~Hearing Officer~~

AR:bdg  
Enc.

June 7, 1967

6-22-67

**STATE OF NEW YORK  
STATE TAX COMMISSION**

.....  
**IN THE MATTER OF THE APPLICATION**

**OF**

**BRUCE W. GATLEY**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEAR 1959**  
.....

Bruce W. Gatley, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959 (Assessment No. AD-052297) and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance on November 21, 1966 at 50 Centre Street, New York, New York, and the taxpayer having appeared in person at the hearing, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Bruce W. Gatley, resided with his parents at the family home at Thornwood, New York at the time of his induction into the armed forces in 1951; that on his discharge in 1955 he returned to his home in Thornwood, New York and accepted employment with General Precision Laboratory of Pleasantville, New York, a manufacturer of electronic equipment, as a field representative; that taxpayer's duties consisted of training purchasers of electronic equipment in its use and operation; that such duties were performed at the places where such equipment was installed or at such other places as requested by the customers; that in performing his duties, taxpayer was required to travel extensively and to reside

temporarily at or near the place of his work; that the taxpayer was so engaged continuously up to and including the entire year of 1959.

(2) That for 1959 taxpayer's employer reported wages paid to him of \$6,045.28 on Form W-2102; that on November 18, 1963, the Income Tax Bureau issued Assessment No. AB-972207 against the taxpayer in the amount of \$109.48 based on his failure to file a return or pay taxes for the year 1959; that from the commencement of his employment up to and including the entire year of 1959, taxpayer's employer's records bore his address at Thornwood, New York as his home address; that mail was addressed and delivered to the taxpayer at his home at Thornwood, New York; that the taxpayer returned to his home at Thornwood, New York after completing his assignment in Japan in 1963.

(3) That the taxpayer contends that during 1959 he was domiciled in California and maintained a permanent place of abode there; that during such year he was on assignments in Spokane, Washington; Riverside, California; Sacramento, California; and Japan, and resided temporarily in each of these places; that during such year he owned an automobile registered in the State of Washington and used a Washington State driver's license; that his Federal income tax return for such year was filed from an A.P.O. address in Japan; and that his stays outside New York were occasioned by the requirements of his employment and were of a temporary nature.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby  
**DETERMINES:**

(A) That at the commencement of his employment by General Precision Laboratory in 1955, the taxpayer was domiciled within the State and had a permanent place of abode at Sherwood, New York; that the nature of his employment required him to travel extensively and reside, temporarily, in the States of California, Washington, North Dakota, Georgia, and in Guam and Japan; that up to and including 1959 the taxpayer acquired no domicile nor maintained any permanent place of abode without the State; that up to and including 1959 the taxpayer retained his domicile in New York and his permanent place of abode within the State; and that during 1959 the taxpayer was a resident of the State of New York within the meaning of Section 390 of the Tax Law.

(B) That, accordingly, Assessment No. AB-03807 imposing income taxes, penalties and interest on the taxpayer for 1959 is correct and the amount set forth therein is due and owing together with interest and other statutory charges; that the said assessment does not include any tax or other charges which could not have been lawfully demanded, and that taxpayer's application for revision or refund with respect thereto be and the same is hereby denied.

Dated: Albany, New York this 10th day of July, 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**PRESIDENT**

/s/

JAMES R. MACDUFF

**COMMISSIONER**

/s/

WALTER MACLYN CONLON

**COMMISSIONER**