

STATE OF NEW YORK
STATE TAX COMMISSION

Brian D. Starer
D.I.
ART. 22
YRS. 1967

In the Matter of the Petition
:
of
:
BRIAN D. STARER
:
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1967.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, 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 9th day of July, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon BRIAN D. STARER (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Brian D. Starer
7 Gibson Court
Utica, New York 13501
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 Post Office Department within the State of New York.

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

9th day of July, 1971

Linda Wilson
Martha Jones

STATE OF NEW YORK
STATE TAX COMMISSION

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of

BRIAN D. STARER

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Tax Law for the (Year(s) 1967.

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State of New York
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Linda Wilson, 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 9th day of July, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon JEREMIAH F.

MANNING, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jeremiah F. Manning, Esq.
c/o Ainsworth, Sullivan, Tracy & Knauf
75 State Street
Albany, New York 12207

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 Post Office Department within the State of New York.

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

9th day of July, 1971.

James J. Jones

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BRIAN D. STARER
for a Redetermination of a Deficiency
or for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
year 1967.

DECISION

Brian D. Starer petitioned for a redetermination of a deficiency in personal income tax for the year 1967.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on December 9, 1970, before L. Robert Leisner, Hearing Officer.

The taxpayer, who was present, was represented by Ainsworth, Sullivan, Tracy, and Knouf, (Jeremiah F. Manning, Esq. of Counsel).

The Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner filed no New York State Personal Income Tax return for 1967.

2. The issues in this case are whether petitioner was a resident of the State of New York during the year 1967, or whether the petitioner moved his residence or domicile or both out of New York State in January or February of 1967.

3. A Notice of Deficiency in income tax and an assertion of a 25% penalty under section 685(a) of the Tax Law for the taxable year 1967 was issued on November 24, 1969, under File No. 29865294.

4. Petitioner timely filed a petition for redetermination of the deficiency.

5. Petitioner was born in Oriskany, New York. He lived there and graduated from high school in 1963. Thereupon petitioner attended the U. S. Merchant Marine Academy at Kings Point, New York, graduating on February 10, 1967, spending more than thirty days in New York during 1967.

6. Petitioner shipped out of Hoboken, New Jersey, on board a vessel of American Export Isbrantsen lines on February 19, 1967. Petitioner sailed on a number of coastwise and foreign voyages from Hoboken, New Jersey, and lived aboard ship in 1967 when his ship was in port at Hoboken.

7. Petitioner maintained a bank account in Utica and in New Jersey, and also had a post office box in Hoboken, New Jersey, in 1967. Petitioner joined a union located in New Jersey and had New Jersey payroll taxes deducted from his wages.

8. Petitioner married on December 31, 1967, and his wife lived in Utica or its environs.

9. Petitioner inquired at the Queens District Tax Office about the necessity of filing a New York State Income Tax return and was told no return was necessary. Petitioner testified that his wife had told him that she had made a similar inquiry at the Utica District Tax Office and had been told that no return was required of petitioner. Petitioner believed this to be true.

CONCLUSIONS OF LAW

A. The petitioner acted in good faith and had reasonable cause to act as he did in not filing a return.

B. The evidence that petitioner lived aboard ship for part of 1967 and petitioner's accompanying acts and declarations fail to establish that petitioner intended to change his domicile. Long continued change of residence is strong evidence of intent to change the domicile. The intention to make such a change must be accompanied by very clear proof. A mere declaration of an intention not to return is not conclusive as to a change in domicile. Depuy v Wirtz, 53 N.Y. 556, In the Matter of Thomas Bye, 2 Daly 525.

C. The taxpayer's domicile and residence continued in New York State during the taxable year of 1967.


D. The tax assessment is sustained and the application for revision of the tax is denied.

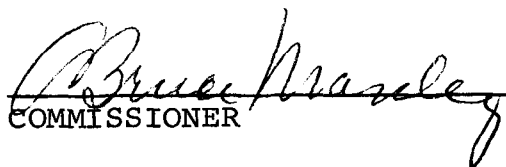
E. The imposition of the penalty is cancelled and remanded.

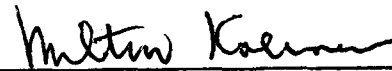
F. Statutory interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York

July 9, 1971


COMMISSIONER


COMMISSIONER


COMMISSIONER