

July 20, 1971

Mr. Peter M. Todebush  
115 Trumbull Road  
Manhasset, New York 11030

Dear Mr. Todebush:

This is in reply to your letter of July 9, 1971, a copy of which I received.

I assure you that the decision in your recent case before the Commission is in accordance with long-standing policies of the Department. These policies are based not on the theory that State taxes are based upon physical presence alone, as you seem to believe, but on the theory that persons domiciled in the State, even if absent, derive some benefits of citizenship from New York State as, for instance, the right to vote. In finding that you remained a domiciliary of New York, the decision follows long settled common law doctrine that a person is considered to remain domiciled in the place where he was formerly located until his circumstances show that he has settled down elsewhere.

While New York, unlike most states, grants some relief to domiciliaries actually absent from the State, the decision you object to finds that you do not qualify for that relief. Even your letter admits that you had no fixed intention to abide elsewhere during the year in question. In any event, the Commission is following, as it has for 20 years, the dictum of court decisions dealing with New York residents who enter the armed forces (see Ryan v Chapman, 1948, 272 App. Div. 99).

Sincerely,

  
NORMAN GALLMAN  
Commissioner

ER/z

P. TODEBUSH  
115 Trumbull Rd.  
Manhasset, NY 10030

Mr. Nigel G. Wright  
Hearing Officer  
Department of Taxation and Finance  
Building 9, Room 214 A  
State Campus  
Albany, New York 12226

115 Trumbull Road  
Manhasset, New York 11030  
July 9, 1971

Mr. Nigel G. Wright  
Hearing Officer  
State of New York  
Department of Taxation and Finance  
Building 9, Room 214 A  
State Campus  
Albany, New York 12226

Dear Mr. Wright:

I am in receipt of the decision of the State Tax Commission concerning my petition for redetermination of deficiency of personal income tax under Article 22 of the tax law for the year 1960.

Under "findings of fact", paragraph 4 is incorrect to the extent that I resided in New York City from November 1960 until October 1961, at which time I lived successively in Newport, Rhode Island; Alpine, New Jersey; and Wilmington, Delaware; finally returning to New York at my current address in July 1967.

I find the decision of the commission highly discriminatory to the extent that the particular duty assignment (i.e. ship) I received did not allow me to establish a new domicile. And if I apply the rationale "The acquisition of a permanent place of abode requires a manifest intention to reside with some degree of permanence at the new abode", it has only been since I moved to my current address that I fulfill this requirement. To be considered a statutory resident of New York because of my living with my parents is completely inconsistent with the above, particularly in view of paragraph 3, Findings of Fact ("At this time, 1957, he had no fixed intention to return to his parents' home"), and the second paragraph of this letter.

The payment of the deficiency involved has been made. I find the entire reasoning process behind my tax assessment totally incomprehensible. State taxes are essentially "user" taxes. With no physical presence in New York State I feel exasperated, much like the colonists and their "taxation without representation", which is when it all started. And the application of intent for residence requirements is completely arbitrary, particularly when you penalize me with my parents' residence when it is no longer applicable.


Mr. Nigel G. Wright

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July 9, 1971

I would appreciate any comments you might have.

Very truly yours,



Peter M. Todebush

cc: Norman F. Gallman  
A. Bruce Manley  
Milton Koerner

STATE OF NEW YORK  
STATE TAX COMMISSION

*Todebush; Peter*  
*Income Tax*  
*1971*

In the Matter of the Petition

of

Peter M. Todebush

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) 1960

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

State of New York  
County of Albany

Martha Funaro , 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 29th day of March , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Peter M.

Todebush (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Peter M. Todebush  
115 Trumbull Road  
Manhasset, New York 10030

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

29th day of March , 1971.

Linda Wilson

*Martha Funaro*

STATE OF NEW YORK

STATE TAX COMMISSION

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|---------------------------------------|---|----------|
| In the Matter of the Petition         | : |          |
|                                       | : |          |
| of                                    | : |          |
|                                       | : |          |
| PETER M. TODEBUSH                     | : | DECISION |
| for a Redetermination of a Deficiency | : |          |
| or for Refund of Personal Income Tax  | : |          |
| under Article 22 of the Tax Law for   | : |          |
| the Year 1960.                        | : |          |

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Peter M. Todebush filed a petition pursuant to section 689 of the Tax Law for a redetermination of a deficiency or for refund of personal income taxes imposed under Article 22 of the Tax Law for the year 1960. A hearing was held on September 17, 1970, at 2:00 P.M. before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission at 80 Centre Street, New York, New York. Petitioner appeared in person and the Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq. of Counsel).

FINDINGS OF FACT

1. The sole issue in this case is whether the taxpayer was a statutory resident of New York under Tax Law section 605(a)(1) during 1960.
2. Until 1957, taxpayer resided with his parents in Manhasset, New York. In 1959, taxpayer's parents sold their house and took a long vacation but returned to live in Cutchogue, Long Island.
3. In July 1957, taxpayer entered Officer's Candidate School in Newport, Rhode Island. Four months later, he was assigned to a destroyer with a home port in Norfolk, Virginia. At this time, he had no fixed intention to return to his parents home or to New York. His assignment on board the destroyer was for a term of three years with an option of transferring after one and one-half years. He

chose to remain and served on said destroyer for the full term ending November 1960. During this period of service, taxpayer was in New York for less than 15 days. When his ship was in port, taxpayer would rent an apartment in Virginia Beach, Virginia, or in Ocean City, Maryland. Taxpayer had his car registered in Virginia and kept his car parked in Virginia while he was at sea.

4. Taxpayer left active duty in the U.S. Navy in November 1960 and since then has resided and worked in New York City.

5. The deficiency amounts to \$93.01 plus interest.

Upon the foregoing findings and all the evidence in the case  
The State Tax Commission hereby,

DECIDES:

A. The acquisition of an abode on board a ship for a limited period of time is not sufficient to establish a new domicile. Not having acquired a new domicile, the taxpayer's former domicile in New York is deemed to continue.

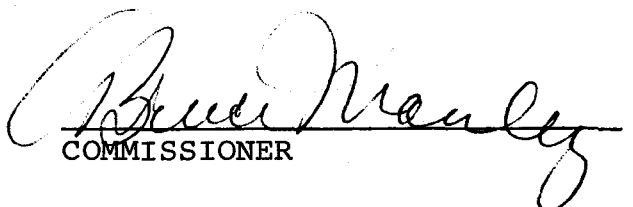
B. The acquisition of a permanent place of abode requires a manifest intention to reside with some degree of permanence at the new abode and there is no evidence of such intent in this case. The taxpayer thus remained a statutory resident of New York during 1960, the taxable year in question.


C. The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due pursuant to the Tax Law.

DATED: Albany, New York  
March 29, 1971

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER