

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER F. GANNON

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) 1969

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

State of New York
County of Albany

LYNN 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 5th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon PETER F. GANNON

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Peter F. Gannon
c/o Mr. Gordon Gannon, Jr.
Brisbane Building

and by depositing same enclosed in a postpaid properly addressed wrapper in a
Buffalo, New York 14202
(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

5th day of December, 1972.

Martha Furness

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER F. GANNON

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) 1969

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

State of New York
County of Albany

LYNN 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 5th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon GORDON GANNON, JR.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Gordon Gannon, Jr.
Brisbane Building
Buffalo, New York 14202

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

5th day of December, 1972

Martha Fumano

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
December 5, 1972

Mr. Peter F. Gannon
c/o Mr. Gordon Gannon, Jr.
Brisbane Building
Buffalo, New York 14202

Dear Mr. Gannon:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
590 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER F. GANNON	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	

Petitioner, Peter F. Gannon, petitioned for a redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the year 1969.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on April 18, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Gordon Gannon, Jr., Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the petitioner a resident of New York State for income tax purposes during the entire year of 1969?

FINDINGS OF FACT

1. Petitioner, Peter F. Gannon, timely filed a 1969 New York State income tax resident return for the period January 1, 1969 to September 15, 1969, and a nonresident tax return for the period of September 15, 1969 to December 31, 1969.

2. A Notice of Determination of deficiencies in income tax for the year 1969 was issued on November 30, 1970, against the taxpayer under File No. 9-49006031.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The taxpayer asserted that he ceased to be a New York resident for tax purposes after September 15, 1969, and that he had changed his domicile and residence at that time.

5. In August of 1969 as a result of financial and matrimonial difficulties, the taxpayer was finally divorced from his spouse of some four years in the Supreme Court of the State of New York. At that time, the taxpayer was indebted in excess of \$10,000.00 and without funds to sufficiently pay said indebtedness without the filing of bankruptcy.

6. At that time, taxpayer sought employment out of state for purposes of paying off the debts incurred during his marriage which had just recently ended. An offer was made by the Alaska Barge and Tug Company of Seattle, Washington for employment in the Republic of Viet Nam on a contract basis which the taxpayer accepted. The employment within the City of Buffalo was terminated and the taxpayer purchased a ticket and left the City of Buffalo and went to Saigon in the Republic of Viet Nam. Prior to departing from the City of Buffalo, a power of attorney was signed authorizing taxpayer's brother, Gordon Gannon, Jr., Esquire to handle all matters concerning business and other difficulties which may be incurred by the taxpayer. Said power of attorney was to continue until all debts were disposed of by the taxpayer through his brother, Gordon Gannon, Jr.

7. In September of 1969 the taxpayer commenced working for the Alaska Barge and Tug Company as a seaman and he worked and lived aboard a tugboat in the waters off of the coast of Viet Nam. For a period of nine months the taxpayer worked as such and in July of 1970 completed a nine-month contract with said company. A period of three weeks was taken for a vacation by the taxpayer during which time he made an extensive tour of the world and returned to

Viet Nam approximately the first day of August, 1970 and thereupon contracted with the Sealand Corporation as a dispatcher in the demilitarized zone area of the I Corps in the northern section of the country. Said employment was continued until the middle of December, 1970, at which time, because of the situation in Viet Nam and the relationship between the Vietnamese people and the American civilians, the taxpayer felt for his safety that he had best leave the country. Whereupon the taxpayer went to Bangkok, Thailand and subsequently to Perth, Australia in January, 1971, where he stayed until July, 1971 when he returned to Buffalo on a visit and to look into employment opportunities in Canada and the U.S.A. It had been the intention of the taxpayer since his departure from the United States in August of 1969 to work in Viet Nam on a permanent basis until such time as sufficient money was made to reduce his current liabilities in the United States to the point where he no longer need to fear bankruptcy and under the circumstances, to then subsequently leave the Republic of Viet Nam. He asserts he then intended to reside as a permanent immigrant in the Country of Australia. Since July, 1971 the taxpayer has continued to stay in the United States and in April, 1972 he was contemplating moving to Colorado.

8. The home in New York State which the taxpayer owned during his married life was sold, the only assets he had were a few stocks and bonds which are being held by his brother for disposition at an appropriate time and under the circumstances, a few items of personal property which he had in storage in New York State.

CONCLUSIONS OF LAW

A. The evidence that petitioner lived aboard the tugboat during 1969, 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.

B. The taxpayer's domicile and residence continued in New York State during the taxable year of 1969.

C. The determination of the deficiency is sustained and the taxpayer's petition is denied.

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

DATED: Albany, New York
December 5, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER