

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN LANE, JR.

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) 1965

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 16th day of March , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon John Lane, Jr.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John Lane, Jr.
3230 South 28th Street
Alexandria, Virginia 22302

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

16th day of March , 19 72

Ral Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 16, 1972

John Lane, Jr.
3230 South 28th Street
Alexandria, Virginia 22302

Dear Mr. Lane:

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

Please take further notice that pursuant to **section 690**
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN LANE, JR.	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

John Lane, Jr. filed a petition under section 689 of the Tax Law for the redetermination of a deficiency and for refunds in personal income tax under Article 22 of the Tax Law for the year 1965. In lieu of a hearing, the petitioner, without counsel, and the Income Tax Bureau, by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) have submitted the file pertaining to the deficiency to the State Tax Commission. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether a domiciliary of this State who changed his abode during 1965 is a resident for the entire year or whether he can be considered a nonresident for part of the year under section 605 of the Tax Law, and thus entitled to file a non-resident return for part of the year under section 654 of the Tax Law.

FINDINGS OF FACT

1. Petitioner was, during 1965 and prior years, a domiciliary of New York State.

2. Until March 1, 1965, petitioner resided with his parents in Yonkers, New York. He finished law school in June, 1964, and worked for a New York City law firm until February, 1965. He applied for a direct commission into the Air Force Reserve and received a commission in January, 1965.

3. On March 1, 1965, petitioner reported to his duty station at the office of the General Counsel, United States Air Force, Pentagon Building, Washington, D.C. From March until November, 1965 he rented an apartment in Arlington, Virginia under a six month lease. He then moved to another rented apartment in Alexandria, Virginia which he held under a yearly lease and which he kept until 1967. Both apartments were chosen so as to be suitable after petitioner's planned marriage in September, 1965.

4. Petitioner spent more than 30 days in New York State between January 1, 1965, and February 28, 1965. He spent no time in New York State between March 1, 1965, and December 31, 1965.

5. The deficiency amounts to \$50.75 including interest. The refund claimed is for withholding tax in the amount of \$35.20.

CONCLUSIONS OF LAW

Petitioner was a New York resident, as defined in section 605 of the Tax Law, for the entire year 1965 and was not entitled to file a return for part of 1965 under section 654 of the Tax Law as a nonresident. Petitioner did not change his domicile during 1965. Furthermore, he remained a New York resident since he had no place of abode outside of New York for the entire year 1965, and he did maintain a place of abode in New York for part of such year. We must reject petitioner's argument that he satisfied the conditions of section 605(a)(1) when only the latter part of 1965 is considered

and that therefore he should be considered a nonresident for that part of the year. The acquisition of a new place of abode or the abandonment of an old place of abode during a taxable year does not cause a change in residence during such taxable year.

The provisions defining residence in terms of permanent place of abode were added to the income tax law (see section 350 subdivision 7 of Article 16 of the Tax Law, the predecessor of section 605) by Chapter 425 of the Laws of 1922 to affect only those individuals who continuously from year to year claim a domicile in one state but actually maintain a home in another state with some degree of permanence. These provisions have been interpreted to mean that the requisite permanent place of abode must exist for the entire taxable year.

The further provisions added by chapter 462 of the Laws of 1934 relating to New York domiciliaries and imposing the dual requirement that a domiciliary maintain no permanent place of abode in New York and maintain a permanent place of abode outside of New York have been interpreted to impose two separate requirements relating to a permanent place of abode each of which must be met for the entire taxable year in question and neither of which has been met by this petitioner. The provisions of section 654 of the Tax Law relating to two returns thus apply only where there is a change in residence by reason of a change of domicile during the taxable year. These provisions have never been held to apply where there is only an acquisition or abandonment of a place of abode even though they were added to the predecessor of section 654 (section 367-a of Article 16

of the Tax Law) by the same law (chapter 425 of the Laws of 1922), that defined residence in terms of a permanent place of abode. This construction of the law has been upheld by the courts in *People ex rel Mackell v Bates*, 278, App. Div. 724.

DECISION

The petition is denied. The refunds are denied. The deficiencies are affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
March 16, 1972

STATE TAX COMMISSION

Norman Ballman

COMMISSIONER

Robert Stanley

COMMISSIONER

Milton Koenig

COMMISSIONER

May 22, 1973

Mr. John Lane, Jr.
913 Dalebrook Drive
Alexandria, Virginia 22308

Dear Mr. Lane:

This is in response to your letter of May 14, 1973.

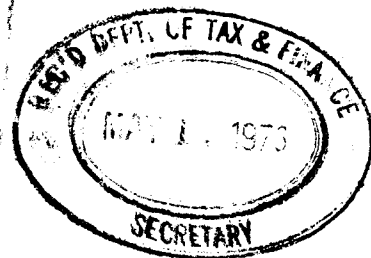
Enclosed please find a copy of the decision and notice of decision in your case.

Very truly yours,

NGW/maf
Enclosure

Nigel G. Wright
Hearing Officer

913 Dalebrook Drive
Alexandria, VA. 22308
May 14, 1973



State Tax Commission
State of New York Department of
Taxation and Finance
Building 9, Room 214A
State Campus
Albany, New York 12226

Re: In the Matter of the Petition of John Lane, Jr.
(Personal Income Tax 1965)

Gentlemen:

A letter to me dated April 27, 1973, from
Gabriel L. DiCerbo, Chief, Review Unit, Income
Tax Bureau, suggests that a decision was
rendered by the State Tax Commission on March
16, 1972, with respect to my petition.

I have never received notice of any such
decision or a copy of any such decision. If
such a decision has been issued, kindly send
me a copy.

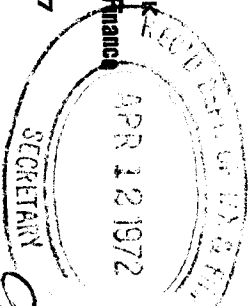
Please note my correct address at the
head of this letter.

Thank you.

Yours very truly,
John Lane, Jr.

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



3/25
3/30
4/6

913 Dale Street Dr



22-308

John Lane, Jr.

3230 South 28th Street

Alexandria, Virginia

22302

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

CERTIFIED

No. 592410

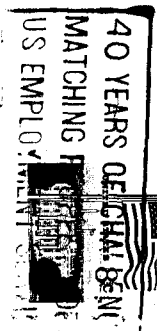
MAIL

3-25-72

APR 3 1972

913 Walnut St.

Philadelphia, Pa. 19103



Handwritten text, likely a return address or recipient information, is visible but mostly illegible due to the quality of the scan. It appears to be written in ink on a light-colored background.



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

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DATED: Albany, New York
March 16, 1972

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COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koverman

COMMISSIONER