

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL A. CHERNEGIE

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(ss)~~ 22 of the  
Tax Law for the Year(s) 1970, 1971 and  
1972.

State of New York  
County of Albany

JANET MACK

, 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 May, 1975, she served the within

Notice of Decision ~~(ss) Decision~~ by (certified) mail upon MICHAEL A. CHERNEGIE

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

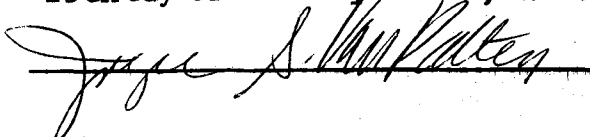
wrapper addressed as follows: Mr. Michael A. Chernegie  
83 Half Moon Bend  
Coronado, California 92118

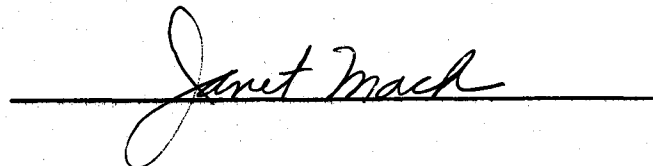
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~(ss)~~ 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 May, 1975.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
~~James H. Tully, Jr.~~  
~~THIRD DEPUTY COMMISSIONER, PRESIDENT~~

A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
May 29, 1975

Mr. Michael A. Chernegie  
83 Half Moon Bend  
Coronado, California 92118

Dear Mr. Chernegie:

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

Please take further notice that pursuant to  
Section ~~(xx)~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
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

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MICHAEL A. CHERNEGIE	:	
for Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1970, 1971 and 1972.	:	

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Petitioner, Michael A. Chernegie, 83 Half Moon Bend, Coronado, California 92118, petitioned for a redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the years 1970, 1971 and 1972.

The case was submitted for decision on information contained in the file and referred to L. Robert Leisner, Hearing Officer, for review. The case has been duly examined and considered.

ISSUE

Did the taxpayer, a serviceman, maintain a permanent place of abode outside of New York State during each year in question?

FINDINGS OF FACT

1. Petitioner, Michael A. Chernegie, timely filed New York State income tax returns for the years 1970, 1971 and 1972 and claimed a refund.

2. A Notice of Denial of the refund claims for personal income taxes for the years 1970, 1971 and 1972 was issued on January 28, 1974, against the taxpayer under File No. 2-13616785.

3. The taxpayer petitioned for redetermination of the denial on July 30, 1974.

4. The taxpayer left New York State in April, 1956 and has been on continuous active duty since then, with the exception of an eight months break in service between March and November, 1960, during which time the taxpayer lived in New York State. He maintains no permanent place of abode in New York State and has not spent more than 30 days in New York State since 1961.

5. The taxpayer has not spent 30 days in New York State during any year since 1961. On being assigned to California in April, 1969, the taxpayer was assigned to duty stations by the Navy. The first was the Naval Missile Engineering Station in Port Hueneme and the second at Naval Weapons Station at Seal Beach. During the years in question, the taxpayer lived at:

a) Government furnished Bachelor Officer Quarters, Port Hueneme, California, for the entire year of 1970 and all of 1971 up to July 15. He paid \$95.10 per month in 1970 and \$105.00 per month in 1971. All utilities were furnished by the Navy except the telephone.

b) Unfurnished apartment, 3460 Peninsula Road, Oxnard, California from July 15, 1971 to August 3, 1972. He paid \$165 per month. Electricity was furnished, but he paid gas (heat and cooking), and telephone.

c) Unfurnished apartment, 16792 Talisman Lane, Huntington Beach, California from August 4, 1972 to May 4, 1973. He paid \$210 per month and paid all utilities.

6. The taxpayer has never been married and was single during all the years in question.

#### OPINION

The taxpayer, living in government furnished Bachelor Officers Quarters did not maintain a permanent place of abode for the years 1970 and 1971. Accordingly, he is subject to taxes for 1970 and 1971.

The taxpayer, in maintaining apartments in 1972 and 1973, which were unfurnished and on which he paid utilities and furnished with his own household goods and furnishings, maintained a permanent place of abode outside of the State of New York, and he would not be taxable during 1972 and 1973. Ryan v. Chapman 273 A.D. 99.

#### DECISION

A. The taxpayer did not maintain a permanent place of abode outside the State of New York in 1970 and 1971. The denial of the refund claim for 1970 and 1971 is sustained.

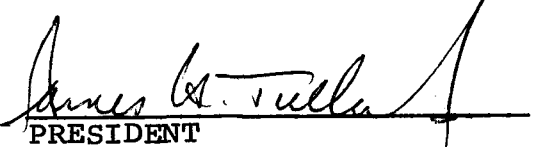
B. The taxpayer maintained a permanent place of abode outside

the State of New York in 1972, and he did not maintain a place of abode in New York State and he spent less than 30 days in New York State. He is not subject to New York State income tax for the year 1972. The taxpayer's refund claim for 1972 is granted.

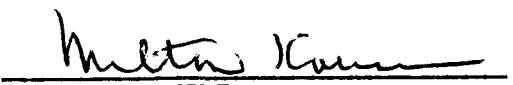
C. Interest shall be paid on the refund claim pursuant to the Tax Law for the year 1972.

DATED: Albany, New York  
May 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER