

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT S. GMEREK

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 ~~(s)~~ 22 of the
Tax Law for the Year ~~(s)~~ 1968

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 28th day of October , 1975 , she served the within
Notice of Decision (~~of Deficiency~~) by (certified) mail upon Robert S. Gmerek

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert S. Gmerek
999 Balmer Road
Youngstown, New York 14174

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

28th day of October , 1975.

May Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT S. GMEREK

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)~~ 1968

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

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 28th day of October , 1975 , she served the within
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon William Shea, Accountant

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Shea, Accountant
2959 Genesee Street
Cheektowaga, New York 14225

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

28th day of October , 1975

Mary Troff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

Albany, New York
October 22, 1973

Mr. Robert S. Church
970 Salinas Road
Youngstown, New York 14174

Dear Mr. Church:

Please take notice of the ~~decision~~
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (B) ~~800~~ 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,

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT S. GMERЕК	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

Petitioner, Robert S. Gmerek, 999 Balmer Road, Youngstown, New York, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1968.

Upon notice to all interested parties, a formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on October 18, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by William Shea, Accountant and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Albert Rossi, Esq., of counsel).

ISSUE

Was the taxpayer a resident of New York State for income tax purposes during the year 1968?

FINDINGS OF FACT

1. Petitioner, Robert S. Gmerek, timely filed New York State income tax returns.

2. The taxpayer petitioned for refund of New York State income tax withheld from his wages by the New York headquarters of his employer, Bell Aerosystems Company, while he worked for them in Texas.

3. The taxpayer left New York where he was domiciled at the residence of his parents on January 28, 1968. The taxpayer went to Houston, Texas, on special assignment on the directions of his employer, Bell Aerosystems. The taxpayer returned to New York for a period of one week in September, 1969. The taxpayer permanently returned to New York in November, 1969.

4. The taxpayer was assigned to Houston as part of a team of personnel to conduct testing of the Lunar Landing Training Vehicles. The assignment was to last for the duration of the testing which had no definite completion date. In a letter received by the Income Tax Bureau, the taxpayer stated, "I'd like to say that this job was a temporary assignment."

5. The taxpayer rented an apartment in Texas on a yearly lease. He renewed that lease at the end of the first year. The taxpayer registered his car in Texas, obtained a Texas driver's license and utilized Texas banks for checking and savings accounts. The taxpayer voted in a Texas primary election in June or July, 1969.

6. The taxpayer maintained no place of abode in New York during 1968.

CONCLUSIONS OF LAW

A. That the taxpayer was a resident of New York State for income tax purposes during the year 1968. A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. The declarations of the individual are not conclusive as regards this intention. Similarly, the fact that a person registers and votes in a particular place is not conclusive of intention to domicile. (20 NYCRR 102.2(d)(2)). The taxpayer went to Texas as part of a special assignment in the course of his employment.

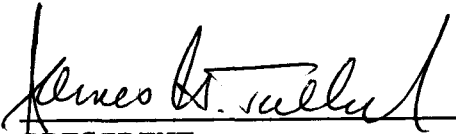
There is no conclusive evidence that the taxpayer formed a firm intent to change his domicile during 1968. The nexus holding the taxpayer to Texas was the special work assignment and not a bona fide intention to remain in Texas regardless of that assignment during 1968.

B. The petition of Robert S. Gmerek is denied.

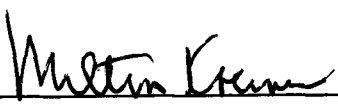
DATED: Albany, New York

October 28, 1975

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER