

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN J. and LINDA S. GOMBERG

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) 1971.

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 December, 1975, she served the within Notice of Decision ~~for the reason stated~~ by (certified) mail upon Stephen J. and Linda S. Gomberg ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Dr. and Mrs. Stephen J. Gomberg
963 Falmouth
Thousand Oaks, California 91360 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)~~ ~~the~~ 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 December, 1975.

Mary Hugg

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. Leisner
Mr. Coburn
(518) 457-3850

DATED: Albany, New York
December 29, 1975

Dr. and Mrs. Stephen J. Gomberg
963 Falmouth
Thousand Oaks, California 91360

Dear Dr. and Mrs. Gomberg:

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

Please take further notice that pursuant to
Section ~~(x)~~ **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: ~~Production Department~~
Law Bureau

4. Petitioner, Stephen J. Gomberg, was a domiciliary of New York State in 1971 prior to moving to Mississippi and entering the military service.

5. Petitioners maintained a permanent place of abode in New York for the first six months of 1971, after which on June 30, 1971, they moved from New York to Biloxi, Mississippi. Petitioner, Stephen J. Gomberg's duty assignment was for a temporary term of two years. During the period from July 1, 1971 to December 31, 1971, petitioners lived in a rented apartment.

6. Petitioners have submitted no Mississippi state tax return for the year 1971.

CONCLUSIONS OF LAW

A. Under the provisions of the Tax Law, 605(a), Reg. Sec. 102.2(d)(2), concerning resident and nonresident status, 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; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, his declarations, along with the fact that he registers to vote, or registers his car in one place, will be given due weight, but they will not be conclusive.

Petitioners have not supported their contention of change of domicile from New York State to Mississippi. Therefore, they must meet the following requirements to qualify as nonresidents.

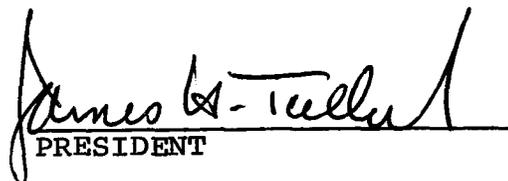
B. A member of the Armed Forces who was domiciled in New York State at the time he entered such service generally retains his status as a domiciliary of New York State throughout his period of armed service, regardless of where he may be assigned to duty or for how long. Accordingly, a member of the armed forces who was domiciled in New York at the time of entrance into military service continues to be taxed as a New York resident unless during the taxable year, he satisfies all of the following three conditions:

1) Maintained no permanent place of abode in New York; 2) maintained a permanent place of abode outside New York; and 3) did not spend thirty days or more in New York. Tax Law, Sec. 605, Reg. Sec. 102.2(b). As domiciliaries of New York State, petitioners have fulfilled none of the above conditions, since they maintained and lived in a permanent place of abode in New York for the first six months of 1971. Accordingly, petitioners do not qualify as nonresidents.

C. The petition is denied and the determination of the deficiency in income tax is sustained.

DATED: Albany, New York
December 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER