

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT U. OSSORIO

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) 1960, 1961 and 1962.

State of New York
County of Albany

Katherine D. Manly, 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 30th day of January, 1975, she served the within
Notice of Decision ~~xxx Decisions xxx~~ by (certified) mail upon Robert U.

Ossorio ~~xxx Decisions xxx~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert U. Ossorio
15 West 10 Street
New York, New York

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 ~~xxx Decisions xxx~~
~~xxx~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~xxx Decisions xxx~~ petitioner.

Sworn to before me this

30th day of January, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
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age, and that on the **30th** day of **January**, 1975, she served the within

Notice of Decision ~~xxx xxx xxx xxx~~ by (certified) mail upon **Mark Rosenbaum, Esq.**
Fleischman, Hitchcock & Brookfield

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Mark Rosenbaum, Esq.

wrapper addressed as follows: **Webster, Sheffield, Fleischman, Hitchcock
& Brookfield**

**One Rockefeller Plaza
New York, New York 10020**

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

30th day of **January**, 1975.

Janet Mack

Katherine D. Manly

STATE OF NEW YORK
STATE TAX COMMISSION

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Notice of Decision ~~xxxxxx~~ by (certified) mail upon **John D. Smyers, Esq.**
Fleischman, Hitchcock & Brookfield

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: **John D. Smyers, Esq.**

**Webster, Sheffield, Fleischman, Hitchcock
& Brookfield
One Rockefeller Plaza
New York, New York 10020**

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Sworn to before me this

30th day of January, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

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

EDWARD ROOK
SECRETARY TO
COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518

ADDRESS YOUR REPLY TO

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

RECEIVED: Albany, New York
January 30, 1973

Mr. Robert U. Caserio
15 West 10 Street
New York, New York

Dear Mr. Caserio,

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

Please take further notice that pursuant to
Section (f) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **four 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,

Nigel C. Wright
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 U. OSSORIO
for Redetermination of Deficiency or for
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1960, 1961, and 1962.

DECISION

Robert U. Ossorio, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency, dated June 22, 1964, in the amount of \$21,056.14, plus interest of \$2,840.61, for a total of \$23,896.75 in personal income tax under Article 22 of the Tax Law for the years 1960, 1961 and 1962.

A hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York City, on March 9, 1972, before Nigel G. Wright, Hearing Officer. The petitioner was represented by John D. Smyers, Esq., and Mark Rosenbaum, Esq. of Webster, Sheffield, Fleishman, Hitchcok & Brookfield, Esqs. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether petitioner was a domiciliary of New York during the years in question.

FINDINGS OF FACT

1. Mr. Ossorio was born in the Philippines in 1923. Since at least his 21st birthday, he has been an American citizen and has remained one at all times thereafter. From 1935 until at least 1944, he resided and was domiciled in Greenwich, Connecticut, at the home of his father who remained there until his death in 1965. Mr. Ossorio has never been married and maintains close relations with his parents.

2. Since 1947, Mr. Ossorio has owned a house in Palm Springs, California. He kept personal effects there at all times though the house was used by a brother and his mother most of the time.

3. In 1952, Mr. Ossorio moved to New York primarily to study ballet and stayed at first with a brother at 9 MacDougal Alley, New York City. He shortly thereafter purchased a "studio house" at 23 Washington Square, North, since renumbered to be 12 MacDougal Alley, New York City. He left New York in June, 1958.

This house was leased out to tenants from July 1, 1958 through November 30, 1959, from January 4, 1960 to October 3, 1961, and from October 24, 1961 through June 15, 1962.

4. From June 1958 until last August 1962, Mr. Ossorio was employed by and on tour with a ballet company in Europe. During this time he had been to New York only once. That was late in 1959 for a period of eight days to have surgery performed after which he went to his father's home in Connecticut. He did not stay at the MacDougal Alley house at this time.

5. Mr. Ossorio spent less than 30 days in New York in each of the years 1960 and 1961. In 1962 he spent more than 30 days in New York.

6. From September 1, 1962, petitioner admits being a resident of New York. Presumably, he stayed at the MacDougal Alley house.

CONCLUSIONS OF LAW

Mr. Ossorio was a domiciliary of New York during the years in question. It is clear that New York was the center of Mr. Ossorio's interests. He moved here in 1952 when he was 29 years old to study ballet and pursue a career. He stayed in New York continuously for at least six years and when he left it was to pursue this same career as a member of a touring company with little opportunity to settle down elsewhere. Mr. Ossorio's claim that he was still domiciled at his father's house is supported only by his family ties and not by evidence of any personal, social or other interest in that location and must be denied, therefore, for insufficient proof.

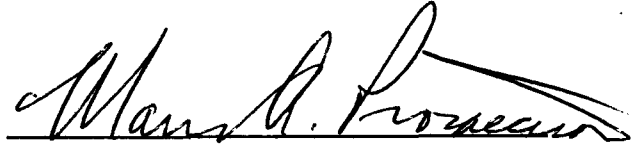
As a domiciliary of New York, Mr. Ossorio is taxable as a resident for the entire year 1962; since it is clear that he spent at least 30 days in New York that year. However, since he did fulfill the qualifications for nonresidency in 1960 and 1961, he is not taxable for those years.

The deficiency is cancelled with respect to 1960 and 1961. The deficiency is affirmed for 1962, this being in the amount of

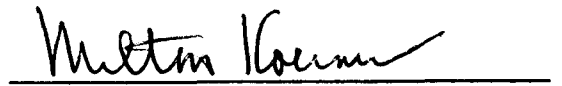
\$6,679.32, with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
January 30, 1975

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER