

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GABBE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (s) 22 of the
Tax Law for the Year (~~s) or Period(s)~~ 1965.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of April, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph Gabbe
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Joseph Gabbe
Woodsland Road
Harrison, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

14th day of April, 1977.

Bruce Batchelor

Janet Paul

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GABBE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(*)~~ 22 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 1965. :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of April , 19 77, ~~he~~ served the within
Notice of Decision by (certified) mail upon Solomon Miller, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Solomon Miller, CPA
Bindamin & Miller
500 Fifth Avenue
New York, New York 10036

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 Postal Service 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

14th day of April , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 14, 1977

TELEPHONE: (518) 457-1723

Mr. Joseph Gabbe
Woodland Road
Harrison, New York

Dear Mr. Gabbe:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH GABBE :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1965. :

Petitioner, Joseph Gabbe, Woodsland Road, Harrison, New York, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1965. (File No. 00001101).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1976 at 11:35 a.m. The petitioner appeared by Solomon Miller, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq. of counsel).

ISSUE

Whether petitioner, Joseph Gabbe, was a resident of New York State, within the meaning and intent of section 605 of the Tax Law, for the year 1965.

FINDINGS OF FACT

1. Petitioner, Joseph Gabbe, filed a New York State nonresident income tax return for the year 1965. This return listed his address as c/o Cadillac Imports Ltd., 498 7th Avenue, New York, New York. Petitioner listed total Federal income as \$39,325.31 and total New York State income as zero. Petitioner requested a refund of \$2,713.40 in New York State tax withheld, and \$816.43 of estimated tax paid, totaling \$3,529.83. This total was refunded by the Income Tax Bureau.

2. On July 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Joseph Gabbe, imposing New York State personal income tax for the year 1965, upon the grounds that an individual employee assigned to work outside the United States does not lose his status as a resident. Accordingly, a Notice of Deficiency was issued, reporting a deficiency of \$2,858.31, plus \$392.45 in interest, and totaling \$3,250.76.

3. Petitioner, Joseph Gabbe, filed a joint Federal income tax return, with his wife, Josephine Gabbe, for the year 1965.

4. Petitioner, Joseph Gabbe, entered into a separation agreement with his wife, Josephine Gabbe, on May 22, 1964. In this agreement Joseph Gabbe agreed to convey an undivided one-half interest in the home at 34 Earlwood Drive, White Plains, New York.

5. From late 1962 until early 1964 the petitioner, Joseph Gabbe, lived at his mother's house on Garth Road, Scarsdale, New York.

6. The petitioner was employed as president of Cadillac Imports, Ltd. in 1964, when he left for Italy to run operations of that company there.

7. The petitioner lived the rest of 1964 and until April, 1965 in a hotel in Italy. In late 1964, the petitioner made an agreement to have a home built in Italy and this home was completed in April 1965, at which time it was paid for by the petitioner and he moved in.

8. The petitioner filed, attached to his 1040 Federal income tax form of 1965, a form 2555 in which he claimed to have made a statement to the Italian authorities that he was not a resident of Italy in the year 1965.

9. The petitioner returned in 1974 to New York State to live after ten years in Italy, because the business opportunities had changed detrimentally, in Italy.

10. In support of his testimony that he had not spent more than 30 days in New York State in 1965, the petitioner offered no documentation such as a diary, or passport, or exit visas, etc.

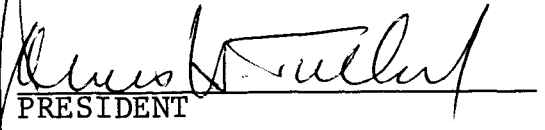
CONCLUSIONS OF LAW

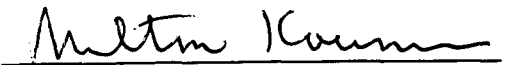
A. That, since petitioner, Joseph Gabbe was a domiciliary of New York State and failed to prove that he spent not more than 30 days in New York State in 1965, therefore, petitioner, Joseph Gabbe, was a resident of New York State within the meaning and intent of section 605(a)(1) of the Tax Law, for said year.

B. That the petition of Joseph Gabbe is denied and the Notice of Deficiency issued July 29, 1968 is sustained.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER