

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD T. HODGE and BETTY HODGE

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(2)~~ 22 of the
Tax Law for the Year(s) ~~1965, 1966 & 1967~~
1965, 1966 & 1967.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 7th day of March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Gerald T. Hodge &
Betty Hodge ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. & Mrs. Gerald T. Hodge
Timber Trails
Sherman, Connecticut 06784

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

7th day of March, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD T. HODGE and BETTY HODGE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year ~~(s) or Period(s)~~ :
1965, 1966 & 1967.

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 7th day of March , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Morton A. Smith

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morton A. Smith, Esq.
Hall, Dickler, Lawler, Kent & Howley
460 Park Avenue
New York, New York 10022

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

7th day of March , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 7, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Gerald T. Hodge
Timber Trails
Sherman, Connecticut 06784

Dear Mr. & Mrs. Hodge:

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

Please take further notice that pursuant to
Section(4) **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 :
GERALD T. HODGE and BETTY HODGE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1965, 1966 and 1967. :

Petitioners, Gerald T. Hodge and Betty Hodge, residing at Timber Trails, Sherman, Connecticut, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965, 1966 and 1967. (File No. 00008).

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 14, 1976, at 2:45 P.M., before Solomon Sies, Hearing Officer. The petitioners appeared by Hall, Dickler, Lawler, Kent and Howley, Esqs. (Morton A. Smith Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. of counsel).

It was stipulated and agreed that the petitioners waive a formal hearing, and consent to a submission of this case to the State Tax Commission upon the entire record contained in the file. The petitioner was permitted to submit an affidavit. Such affidavit was received on September 22, 1976.

After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether the petitioners were statutory residents of New York State for the years 1965, 1966 and 1967?

FINDINGS OF FACT

1. The petitioners, Gerald T. and Betty Hodge, filed non-resident New York State income tax returns for the years 1965, 1966 and 1967. The petitioners executed consents extending the period within which to issue assessments for the years 1965 and 1966 to April 15, 1970. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes and Notice of Deficiency against the petitioners for the years 1965 through 1967 based upon audit, in the amount of \$7,100.53 in tax, together with interest of \$1,144.30, for a total of \$8,244.83, upon the ground that the taxpayers were statutory residents of the State of New York during the aforementioned years.

2. During the years 1965, 1966 and 1967, the petitioners maintained a permanent place of abode at Timber Trails, Sherman, Connecticut. The petitioners voted in Connecticut. Their automobiles were registered in Connecticut. They belonged to social clubs located in Connecticut.

3. During the years in issue the petitioners maintained a permanent place of abode in New York City. They have maintained an apartment at 180 East 79th Street, New York, New York, since 1961.

4. In 1965, petitioner, Gerald T. Hodge, was a partner in the stock exchange firm of Glore, Forgan & Co., located at Wall Street, New York, New York. In 1966 and 1967, he was employed by Glore Forgan, Wm. R. Staats Inc., the successor in interest to the partnership. The petitioner, Betty Hodge is an artist-painter. During the years in issue, she maintained a studio apartment at 58 East 86th Street, New York, New York.

5. On his income tax returns petitioner, Gerald T. Hodge indicated the following days worked in New York:

1965 - 169 days
1966 - 200 days
1967 - 200 days

On the W-2 (wage and tax statement) forms for 1966 and 1967, petitioner's employer indicated his residence address as 180 East 79th Street, New York, New York. When the petitioners went to Europe for a vacation in 1967 for 1 1/2 months (August to September 30, 1967), they rented their Connecticut home for \$1500.00 for this period. According to their passports, the wife listed her address as 180 East 79th Street, New York City, and the husband listed his address as Sherman, Connecticut.

6. The petitioners contend that they spent 206 days outside the State during the years 1965 and 1966, and 201 days in 1967, and that the statements on the returns for 1966 and 1967 were in error.

7. Based upon the diaries presented, the auditor concluded that the petitioners spent more than 183 days in New York during each of the years 1965, 1966 and 1967. The diary entries were not complete. There were discrepancies between the days claimed to have been spent outside the State and those days actually spent in New York, as disclosed by the diary entries. The petitioners have failed to sustain the burden of proof that they spent less than 184 days during each of the years 1965, 1966 and 1967 outside New York State.

CONCLUSIONS OF LAW

A. That the petitioners were domiciliaries of the State of Connecticut in 1965, 1966 and 1967.

B. That the petitioners maintained a permanent place of abode within the State of New York in 1965, 1966 and 1967.

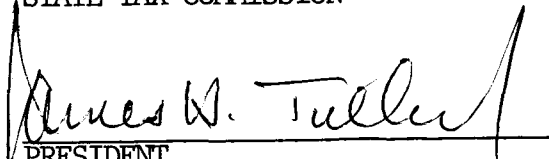
C. That the petitioners spent more than 183 days within the State of New York in each of the years 1965, 1966 and 1967.

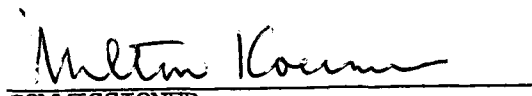
D. That in 1965, 1966 and 1967, the petitioners were residents of the State of New York for income tax purposes within the intent and meaning of section 605(a)(2) of the Tax Law.

E. That the petition is denied; that the Notice of Deficiency is correct; and that additional interest shall be added as provided in the Tax Law.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER