

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Peter Cooper :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1969. :

State of New York  
County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Peter Cooper, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Cooper

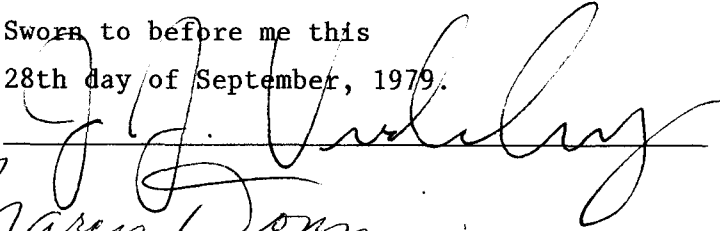
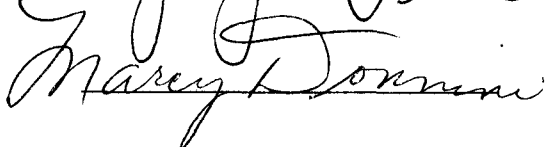
RFD #1

Riegelsville, PA 18077

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

Sworn to before me this  
28th day of September, 1979.

STATE OF NEW YORK  
STATE TAX COMMISSION

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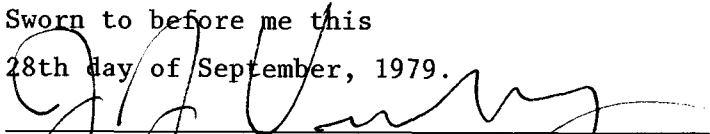

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Marvin Goodfriend the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Marvin Goodfriend  
Barash, Goodfriend & Friedman, P.C.  
600 Third Ave.  
New York, NY 10016

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  
28th day of September, 1979.



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Peter Cooper  
RFD #1  
Riegelsville, PA 18077

Dear Mr. Cooper:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert F. Wulley".

cc: Petitioner's Representative  
Marvin Goodfriend  
Barash, Goodfriend & Friedman, P.C.  
600 Third Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PETER COOPER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	

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Petitioner, Peter Cooper, RFD #1, Riegelsville, Pennsylvania 18077, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969 (File No. 13130).

A formal hearing was scheduled before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, for November 15, 1977 at 1:15 P.M. On said date, petitioner's representative requested that a formal hearing be waived and that the case be submitted to the State Tax Commission, based on the entire record contained in the file. Confirmation of this request was received by letter dated May 22, 1978. After consideration of said record, the Commission renders the following decision.

ISSUE

Whether petitioner was a resident individual of New York for 1969.

FINDINGS OF FACT

1. Petitioner, Peter Cooper, timely filed a 1969 New York State income tax nonresident return. On it he allocated wage income which he received from Peter H. Cooper, Inc. on the basis of days worked within and without New York State. The return indicated that he worked a total of 241 days, 45 of which were days worked in New York State.

2. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing additional income tax for 1969. This was done on the grounds that he failed to reply to a letter of March 8, 1971 regarding both his residency in Pennsylvania and the nature of income which he reported on line 4-C of the New York State return. Accordingly, the Income Tax Bureau issued a Notice of Deficiency for \$16,168.56, plus interest of \$2,705.00, for a total of \$18,873.56.

3. Petitioner leased an apartment at 35 West 9th Street, New York, New York, on October 18, 1967 for two years, four months and fourteen days. Said lease which commenced on October 18, 1967 and ran to February 28, 1970 was in the names of petitioner, Peter Cooper, personally, and Peter Cooper, Inc. A rider annexed to the lease stated that the "tenant shall be using the apartment as his office for the practice of his profession which is that of a Motion Picture Director and Writer".

4. Petitioner's 1968 New York State income tax resident return listed his home address as 35 West 9th Street, New York, New York.

#### CONCLUSIONS OF LAW

A. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year; (2) he maintains a permanent place of abode elsewhere during the entire year; and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (section 605(a)(1) of the Tax Law, and 20 NYCRR 102.2(b)).

B. That in general, domicile is defined as the place an individual intends to be his permanent home, as well as the place to which he intends to return whenever he may be absent (20 NYCRR 102.2(d)).

C. That petitioner, Peter Cooper, was a domiciliary of New York State for 1969.

D. That since petitioner, Peter Cooper, was a domiciliary of New York State during 1969 and maintained a permanent place of abode in the State, he was, therefore, a resident individual, in accordance with the meaning and intent of section 605(a) (1) of the Tax Law and 20 NYCRR 102.2(b).

E. That the petition of Peter Cooper is denied and the Notice of Deficiency issued on January 29, 1973 is sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER