

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert Hauser :

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 1971. :

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Robert Hauser, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Hauser

100 Vail Rd.

Parsippany, NJ 07054

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
16th day of November, 1979.

Janne Knapp

J. Vredenburg

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

November 16, 1979

Robert Hauser
100 Vail Rd.
Parsippany, NJ 07054

Dear Mr. Hauser:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT HAUSER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioner, Robert Hauser, 100 Vail Road, Parsippany, New Jersey 07054, 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 1971 (File No. 15136).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1978 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner was a resident individual of New York State during the year 1971.

FINDINGS OF FACT

1. Petitioner, Robert Hauser, timely filed a 1971 New York State income tax resident return, on which he reported total New York income of \$577.00.

2. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency asserting personal income tax of \$256.70, plus interest of \$60.91, for a sum of \$317.61. The Notice was issued on the grounds that petitioner did not change his New York residence and, therefore, was taxable on income received from all sources.

3. Petitioner lived and worked in New York State until December of 1970. Thereafter, he terminated his employment, sold his furniture, vacated his apartment and went to Las Vegas, Nevada. While in Las Vegas, petitioner began employment in his field (personnel) with Gemini, Inc. d/b/a Lady Luck Casino in January of 1971, and also obtained a divorce. Petitioner contended that he changed domicile and did not intend to return to New York State. In or about October of 1971, petitioner decided that he did not want to live in Las Vegas and looked for employment in the southwestern part of the country. Thereafter, he decided to return to the New York area because of his established reputation in his field of work.

4. After petitioner returned to the New York area in November of 1971, he lived with a friend in Fairlawn, New Jersey. For 1971 he used his parent's New York address (as shown on his return) as his mailing address. He did not live with his parents at any time during said year.

5. Petitioner obtained employment with a department store and worked in its Westchester (New York) store for two weeks in December of 1971. His employer then transferred petitioner to its Hicksville, New York, store where he worked for ten or eleven weeks before resigning. He contended that he had accepted the position with the department store with the understanding that he would eventually be assigned to the Washington, D.C., Baltimore, Maryland, area.

6. In March of 1972, petitioner rented an apartment in Williston, New York, where he resided until December of 1973.

CONCLUSION OF LAW

A. That petitioner's move to Las Vegas, Nevada, was temporary, since he did not show the necessary intent to establish a new domicile. The fact that a person leaves his established domicile with the intention of never returning is important but not necessarily conclusive, and such domicile continues until a new one is clearly established. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct.

B. That petitioner did not change his domicile during 1971 and, therefore, he is held to be a New York State resident for the entire year, within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2.

C. That petitioner was not a statutory nonresident for the year 1971, since he did not maintain a permanent place of abode outside New York State during the entire taxable year, in accordance with the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(b), and, therefore, is subject to tax on income received from all sources.

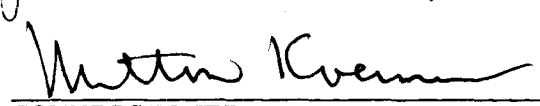
D. That the petition of Robert Hauser is denied and the Notice of Deficiency issued March 29, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 16 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER