

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Joseph J. Bodie

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 1972. :

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 15th day of February, 1980, he served the within notice of Decision by certified mail upon Joseph J. Bodie, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

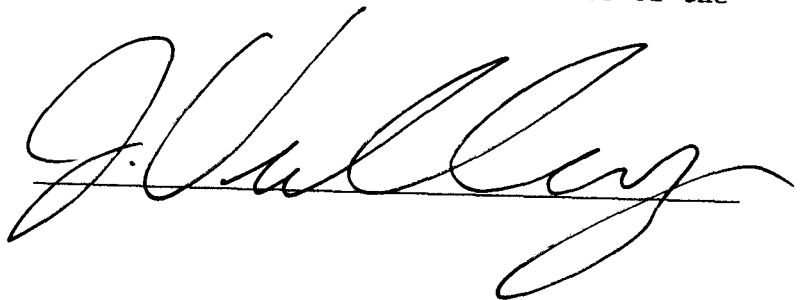
Joseph J. Bodie
141 Edgwarebury Ln.
Edgware, Middlesex, England

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
15th day of February, 1980.

Joanne Knapp



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

February 15, 1980

Joseph J. Bodie
141 Edgwarebury Ln.
Edgware, Middlesex, England

Dear Mr. Bodie:

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 :

JOSEPH J. BODIE :

DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1972. :

Petitioner, Joseph J. Bodie, 141 Edgwarebury Lane, Edgware, Middlesex, England, 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 1972 (File No. 10992).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 18, 1979 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioner was a domiciliary of New York State.

FINDINGS OF FACT

1. Petitioner, Joseph J. Bodie, filed a New York State Income Tax Resident Return for the year 1972, listing his address as 41 Sywell Avenue, Wellingborough, Northamptonshire, England. On the return he indicated his period of New York residency to be January 1, 1972 through March 15, 1972. Said return was filed after the extended due date allowed for filing petitioner's joint Federal income tax return because he found that it was necessary to write to the Income Tax Bureau for additional information. The return was completed and submitted as soon as the information was received from the Bureau.

2. On August 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes on the grounds that petitioner was a resident of New York State for all of 1972 and as a resident, petitioner's total income was taxable to the extent that it was reported on his Federal income tax return, whether earned in New York State or elsewhere. The Bureau also imposed penalty pursuant to section 685(a) (1) of the Tax Law for failure to file a return on or before the extended due date. Accordingly, on July 28, 1975, the Bureau issued a Notice of Deficiency against petitioner for 1972, asserting personal income tax of \$2,024.10, plus penalty of \$198.41 (pursuant to section 685(a) (1) of the Tax Law) and interest of \$338.79, less overpayment shown on the return of \$40.00, for a total due of \$2,521.30.

3. Petitioner's domicile at birth was New York State. However, when he was first employed by General Motors Overseas Corporation in 1946, his domicile was Connecticut. From Connecticut, General Motors Overseas Corporation sent petitioner on a series of foreign assignments. In July, 1959, he was transferred from overseas to the New York City office. On returning to the United States, his intention was to reside in the State of Connecticut because his relatives lived in Connecticut. His family has been present in Connecticut since the last century and part of the land that was held then is still in possession of petitioner's family.

Petitioner's position with the General Motors Overseas Corporation's New York City office required him to do a great deal of overseas travel. Due to the hardship which his absence abroad might cause his wife, he decided to take up residence on Long Island so his wife could be near her own parents during his assignment at the New York City office. Petitioner did not consider this choice of residence to be a change of domicile.

4. Petitioner maintained a house which he owned in Port Washington, New York from July, 1959 until March 15, 1972 at which time General Motors Overseas Corporation reassigned him to England. Throughout all the above years, and even

thereafter, petitioner maintained a residence for his mother in Greenwich, Connecticut.

5. During his period of residence in New York, petitioner held a Connecticut driver's license and also a New York license so as to conform with New York State law. After his period of New York State residence, petitioner's New York driver's license was not renewed. However, his Connecticut license is still held.

6. Petitioner's principal bank account was and is at Putnam Trust in Connecticut. He also maintains a bank account in New York State as a convenience when he returns from overseas.

7. Petitioner voted in New York State during his years of residence because he contended that the right to vote is based on residency and not on domicile.

8. Petitioner contended that Connecticut is the state which he considers to be his home and to which he intends to return when his "wanderings in the employ of General Motors have been completed". He further contended that New York is not his home any more than is England, Portugal, Peru, Belgium and the Netherlands, to name other places to which General Motors has assigned him.

9. Petitioner expressed the view that the statement contained in the tax instructions issued by the State of New York, which reads as follows: "No change of domicile results from removal to a new location if the intention is to remain there only for a limited time, even if it is of relatively long duration", applied to the period of his residence in New York from July 1, 1959 until March 15, 1972. Petitioner held that the length of his residence in the State of New York in itself cannot be taken to have changed his domicile from Connecticut to New York. He further contended that:

"New York State applied two differing standards to the question of change of domicile so that in the case of a person truly domiciled in the State of New York who goes elsewhere, the view is held that domicile is not easily changed despite an extended residence in another place. On the contrary, it seems that in the case of a person such as myself who goes to New York, not intending to stay, it is assumed that an extended period of residence means the establishment of domicile."

He argued that the application of differing standards seems not only unfair, but to due process requirements.

10. Petitioner also stated that since a domicile is held to be the place which a person considers to be home and to which a person ultimately intends to return, a statement by him that Connecticut is his state of domicile should be, in itself, sufficient proof unless the State of New York can offer contradictory evidence.

11. Petitioner had no real property or possessions in New York State after March 15, 1972.

12. In a letter to the State Tax Commission dated November 27, 1975, petitioner stated that he could be contacted by writing to him at 46 Parsonage Road, Greenwich, Connecticut.

CONCLUSIONS OF LAW

A. That petitioner, Joseph J. Bodie, was domiciled in New York State during 1972 and that he did not maintain a permanent place of abode outside New York State during the entire year; therefore, he is taxable as a resident of New York State in accordance with the meaning and intent of section 605(a) of the Tax Law.

B. That petitioner acted in good faith; therefore, the penalty asserted pursuant to section 685(a) (1) of the Tax Law is cancelled.

C. That the petition of Joseph J. Bodie is granted to the extent of cancelling the penalty. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued July 28, 1975; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 15 1980

STATE TAX COMMISSION

James G. Sully

PRESIDENT

James H. Sully

COMMISSIONER

COMMISSIONER