

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert I. Wishnick :

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 1973. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Robert I. Wishnick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert I. Wishnick
500 East 77th St.
New York, NY 10021

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
14th day of November, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1973. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Arthur I. Gordon 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. Arthur I. Gordon
Ernst & Whinney
153 E. 53rd St.
New York, NY 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
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

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

November 14, 1980

Robert I. Wishnick
500 East 77th St.
New York, NY 10021

Dear Mr. Wishnick:

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
Arthur I. Gordon
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
ROBERT I. WISHNICK : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973.

Petitioner, Robert I. Wishnick, 500 East 77th Street, New York, New York 10021, 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 1973 (File No. 20331).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 5, 1980 at 1:15 P.M. Petitioner appeared by Arthur I. Gordon, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a "resident individual" of New York State during 1973, in accordance with the meaning and intent of section 605(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Robert I. Wishnick, timely filed a New York State Income Tax Nonresident Return for 1973. On said return, petitioner claimed a refund of \$2,100.00.

2. On December 5, 1975, the Income Tax Bureau issued a Statement of Refund Adjustment to petitioner regarding the year 1973, which allowed a personal income tax refund in the amount of \$358.22, in lieu of amount claimed based on its determination that petitioner was considered a New York resident for the entire year and taxable on income from all sources.

3. Petitioner, in September of 1972, left New York State for Cambridge, Massachusetts, to attend Harvard University as a graduate student, where he remained until he received his graduate degree in June of 1974. The petitioner, while attending Harvard University, could have resided at the school's dormitory; in lieu thereof, the petitioner leased an apartment on an annual basis. The apartment was fully furnished by the petitioner. Upon his marriage, June 17, 1973, his wife, a teacher at Roxbury High School in Massachusetts, moved into petitioner's fully furnished apartment.

4. The petitioner contended that when he left New York State in September of 1972, it was with the intent to abandon his New York domicile. However, he did not know where he ultimately intended to reside after he completed college. He contended that the New York State address shown on his estimated tax returns was incorrect; and was the result of an error made by his accountant. Petitioner did not change his car registration plates and his driver's license from New York to Massachusetts for the subject year.

5. Petitioner returned to New York State on June 7, 1973, to be married at his parents' synagogue in New Rochelle, New York, where he remained for approximately two weeks. Thereafter, except for an occasional visit with his parents, he did not return to New York State. Petitioner contends that he did not spend more than thirty days in New York State during 1973.

6. Petitioner indicated in his petition that even if he was held as a resident of New York State, a credit for taxes paid to Massachusetts would in itself validate his refund request. No evidence was adduced at the hearing to show that petitioner was entitled to such credit.

CONCLUSIONS OF LAW

A. That the petitioner's move to Massachusetts for the purpose of attending graduate school did not show the intent necessary to establish a new domicile. Section 20 NYCRR 102.2(d)(2) states, in part, that "A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time;". That petitioner in this case did not show that he intended Massachusetts to be his fixed and permanent home.

B. That petitioner, a domiciliary of New York State, was a resident of New York within the meaning and intent of section 605(a)(1) of the Tax Law since he did not meet all three of the conditions set forth in said section so as to qualify as a nonresident for income tax purposes. That petitioner failed to maintain a permanent place of abode pursuant to 20 NYCRR 102.2(e) which states that "...a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose." That petitioner's rental of an apartment must be characterized as a temporary rental for the accomplishment of a particular purpose.

C. That petitioner has failed to sustain the burden of proof provision of the Tax Law, imposed by section 689(e), to show that he was entitled to a

credit for taxes allegedly paid to Massachusetts within the meaning and intent of section 620 of the Tax Law.

D. That the petition of Robert I. Wishnick is denied. That the Statement of Refund Adjustment dated December 5, 1975 denying \$1,741.78 of petitioner's refund claim, is sustained.

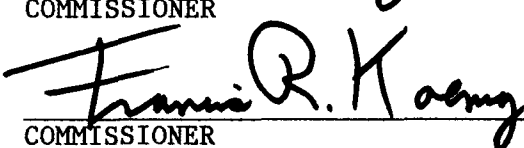
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER