

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Thomas H. Jenkins :
: 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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Thomas Jenkins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas H. Jenkins
2043 Cherri Dr.
Falls Church, VA 22043

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
10th day of April, 1981.

Conrad A. Hayward

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS H. JENKINS : 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, Thomas H. Jenkins, 2043 Cherri Drive, Falls Church, Virginia 22043, 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. 15094).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 22, 1980 at 1:15 P.M. Petitioner, Thomas H. Jenkins, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

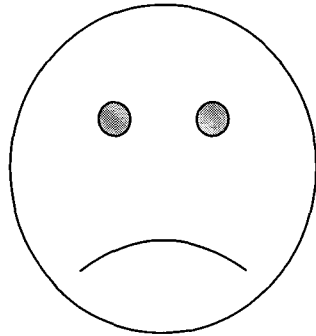
ISSUE

Whether the place of abode maintained by petitioner during the year 1972 was permanent.

FINDINGS OF FACT

1. Petitioner, Thomas H. Jenkins, timely filed a New York State Income Tax Resident Return for the year 1972, on which he reported that his total income of \$11,048.42 was not taxable since he was in the military and resided in private quarters for the entire year.

CORRECTION FOLLOWS



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Sworn to before me this
10th day of April, 1981.

Conrad A. Hayward

[Signature]

STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 10, 1980

Thomas H. Jenkins
2043 Cherri Dr.
Falls Church, VA 22043

Dear Mr. Jenkins:

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

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ISSUE

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FINDINGS OF FACT

1. Petitioner, Thomas H. Jenkins, timely filed a New York State Income Tax Resident Return for the year 1972, on which he reported that his total income of \$11,048.42 was not taxable since he was in the military and resided in private quarters for the entire year.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency for the year 1972 in the sum of \$380.38, plus interest, along with an explanatory Statement of Audit Changes, on which petitioner was held to be a resident of New York State for the entire year 1972 and, accordingly, all income was held to be taxable.

3. Petitioner, Thomas H. Jenkins, was a resident of New York State when he entered the United States Coast Guard in 1964.

4. Petitioner, Thomas H. Jenkins, was stationed aboard the United States Coast Guard Cutter "Minnetonka" from October, 1969 to April, 1971, which was home ported in Long Beach, California.

5. On May 26, 1971, petitioner reported to the Naval ROTC unit at the Massachusetts Institute of Technology (M.I.T.) for independent duty under instruction in the postgraduate program, Naval Construction and Engineering Course. Government quarters were not available for petitioner's use, so he rented an unfurnished studio apartment outside the M.I.T. campus and was given a housing allowance by the United States Coast Guard. Petitioner furnished the studio apartment from his own funds and moved his personal belongings to the apartment.

6. Although petitioner's orders specified that the duration of his studies at M.I.T. were for "approximately 24 months", he received permanent change of station orders. Permanent change of station orders are usually issued to servicemen when their next assignment is unknown. Petitioner testified that upon completion of his training, he could have remained stationed in Massachusetts or received new permanent change of station orders to a new locale outside the State of Massachusetts.

7. Petitioner, Thomas H. Jenkins, continued to rent and occupy the studio apartment in Massachusetts until June, 1973, when in accordance with new permanent change of station orders, he was reassigned to the Coast Guard base at Governors Island in New York City.

8. Petitioner did not maintain a place of abode in New York State and spent less than thirty days in New York State during the year 1972.

9. Petitioner argued that the Audit Division's application of the term "permanent place of abode" as it relates to career servicemen was inequitable.

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 such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

B. That petitioner, Thomas H. Jenkins, was domiciled in New York State during 1972. 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 (20 NYCRR 102.2(e)). That Thomas H. Jenkins' apartment in Massachusetts was maintained for a temporary stay for the accomplishment of a particular purpose. Therefore, he was a resident of New York State.

C. That the petition of Thomas H. Jenkins is denied, and the Notice of Deficiency issued on January 26, 1976 is sustained.

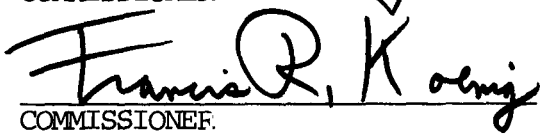
DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER