

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John C. & Jane V. Quinn :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax & UBT under Article 22 & 23 of the Tax Law for :  
the Year 1973.

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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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon John C. & Jane V. Quinn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John C. & Jane V. Quinn  
403 Walpole Ct.  
Timonium, MD 21093

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  
2nd day of October, 1981.

*Annie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John C. & Jane V. Quinn :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax & UBT under Article 22 & 23 of the Tax Law for:  
the Year 1973.

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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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon William J. Hickey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Hickey  
Hartke, Hartke & Hickey  
P.O. Box 2110, Grand Central Station  
New York, NY 10017

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  
2nd day of October, 1981.

*Gunnar P. Haglund*

*J. Vredenburg*

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

October 2, 1981

John C. & Jane V. Quinn  
403 Walpole Ct.  
Timonium, MD 21093

Dear Mr. & Mrs. Quinn:

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 & 722 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,

*Kathy Pfaffenbach*

STATE TAX COMMISSION

cc: Petitioner's Representative  
William J. Hickey  
Hartke, Hartke & Hickey  
P.O. Box 2110, Grand Central Station  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOHN C. and JANE V. QUINN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Year 1973.	:	

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Petitioners, John C. and Jane V. Quinn, 403 Walpole Court, Timonium, Maryland 21093, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1973 (File No. 18762).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 22, 1979 at 11:15 A.M. The petitioners appeared by Hartke, Hartke & Hickey, Esqs. (William J. Hickey, Esq., of counsel). The Audit Division appeared by Peter J. Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciled in and resident individuals of New York State during 1973.

II. Whether a consulting fee received by petitioner John C. Quinn was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, John C. and Jane V. Quinn, filed a joint New York State income tax resident return for 1973 on which they indicated their New York period of residence was from January 1, 1973 to June 30, 1973. They also filed

a Maryland income tax return for 1973 on which they indicated that they established legal residence in Maryland in 1973 and that their Maryland period of residence was July 1, 1973 to December 31, 1973.

2. A Statement of Audit Changes was issued to petitioners on April 11, 1977 asserting additional personal income tax. The adjustment was based on the following:

- a. Since petitioners did not attach a copy of Federal Schedule D to their return, the entire capital gain of \$39,862.29 reported by petitioners was considered earned while New York residents and/or derived from property in New York State.
- b. Net long term capital gains are taxed by New York State at 60 percent rather than 50 percent. Accordingly, 20 percent of the capital gain deduction was added to income.
- c. A modification was made for itemized deductions attributable to items of tax preference under section 615(c)(4) of the Tax Law.

The total additional income tax due was determined to be \$8,691.81. On the same date the Audit Division issued a Notice of Deficiency in the amount of \$8,691.81 in personal income tax, plus \$1,948.44 in interest.

3. On October 7, 1976, the Audit Division issued a Statement of Audit Changes to John C. Quinn asserting that \$538.17 in unincorporated business tax was due on the basis that certain income was from his activities as a management consultant. The exemption was prorated, since it was considered that Mr. Quinn was in business for one-half of the year. On April 11, 1977, the Audit Division issued a Notice of Deficiency for \$538.17 in unincorporated business tax and \$120.64 in interest.

4. Petitioner John C. Quinn was a founder and executive vice-president of Ticket Reservations Systems, Inc. (which later changed its name to Ticketron, Inc. and which is referred to herein as "Ticketron"). In 1967 Mr. Quinn became

president of the corporation. On January 1, 1969, Mr. Quinn entered into an employment agreement with Ticketron superceding an agreement for a three year term dated September 15, 1966. The 1969 agreement was for a five year term. In 1969, Ticketron was acquired by and operated as a subsidiary of Control Data Corporation.

5. In August 1972, Mr. Quinn accepted a position as president of Baltimore Business Forms, Inc. of Baltimore, Maryland. The agreement with Ticketron was terminated effective December 31, 1972 and Ticketron entered into an oral agreement with Mr. Quinn whereby Mr. Quinn was to provide consulting services. Mr. Quinn, who had helped establish a state lottery, was to travel to various state capitals in connection with determining the prospects for state lottery and off track betting systems in such states. Mr. Quinn was paid \$30,712.05 in a lump sum in January, 1973 pursuant to the consulting agreement. During 1973 Mr. Quinn traveled to six state capitals for Ticketron (none of which states were New York) and wrote reports with respect to those activities. The reports were written in Maryland.

6. Immediately after starting with Baltimore Business Forms, Inc. in August of 1972, Mr. Quinn commenced looking for a house in the Baltimore area. Mrs. Quinn came down to the Baltimore area three or four times over the ensuing several months to look at houses. Mr. Quinn also had several Baltimore Business Forms, Inc. salesmen looking for houses for petitioners. The petitioners required a house with six bedrooms since they have eight children and Mrs. Quinn's mother was also living with them. Petitioners found that the cost of housing in the Baltimore area was much higher than they had anticipated and that houses with six bedrooms, when they could be found, were very expensive. In December 1972, petitioners gave a check as a deposit on a house in the Baltimore area,

but the house was withdrawn from the market before a contract could be entered into. In January 1973, petitioners put a binder on a house and finally closed on that house on February 29, 1973. Mrs. Quinn and petitioners' children remained in petitioners' house on Long Island until May 7, 1973. The closing of title in connection of the New York house took place on or about July 1, 1973.

7. Mr. Quinn lived in a hotel room in Baltimore from August, 1972 until February 20, 1973. He returned to New York on occasional weekends to visit his family.

8. Mr. Quinn joined the Sales Executive Club of Baltimore in October, 1972. He obtained a Maryland drivers license in January, 1973.

9. Petitioner John C. Quinn intended to change his domicile from New York to Maryland in August, 1972.

#### CONCLUSIONS OF LAW

A. That since petitioner John C. Quinn intended to change his domicile to Maryland in August, 1972 and actually established residence in the new location, he became a domiciliary of Maryland in August, 1972. Accordingly, the matrimonial domicile was also changed at that time:

"If a husband establishes a change of domicil, the domicil of residence of the wife ordinarily follows. Even the physical presence of the wife is not required to effect a change." (17 NY JUR. Domicile and Residence section 37).

See also: 20 NYCRR 102.2(d)(4).

B. That since petitioners were not domiciled in New York State in 1973 and did not spend more than 183 days of 1973 in New York State, they are nonresident individuals of New York State for 1973 (section 605(a) and (b) of the Tax Law).

C. That none of the income reported by petitioners for 1973 was income from New York sources during 1973 within the meaning of section 632 of the Tax Law. Accordingly, said income is not subject to personal income tax.

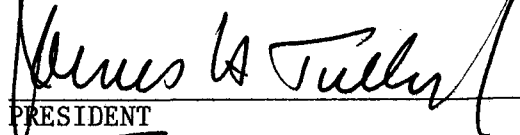
D. That petitioner John C. Quinn did not conduct an unincorporated business within New York State; thus, none of the consulting fee received from Ticketron is subject to unincorporated business tax in this state (section 701(a) of the Tax Law).

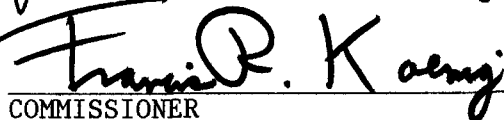
E. That the petition of John C. and Jane V. Quinn is granted and the notices of deficiency are cancelled. The Audit Division is directed to recompute petitioners' income and authorize whatever refund is appropriate.

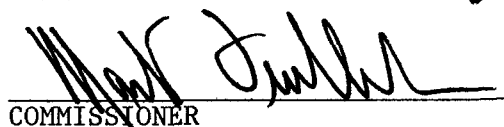
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER