

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
James A. Yoder :  
: 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 :  
1976.

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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 19th day of June, 1981, he served the within notice of Decision by certified mail upon James A. Yoder, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. Yoder  
c/o Robert A. Yoder  
2451 Brookshire Dr.  
Schenectady, NY 12309

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  
19th day of June, 1981.

*Connie R. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
James A. Yoder :

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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 :  
1976.

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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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Robert A. Yoder 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. Robert A. Yoder  
2451 Brookshire Dr.  
Schenectady, NY 12309

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  
19th day of June, 1981.

*Carrie A. Haglund*

*J. Vredenburg*

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

June 19, 1981

James A. Yoder  
c/o Robert A. Yoder  
2451 Brookshire Dr.  
Schenectady, NY 12309

Dear Mr. Yoder:

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  
Robert A. Yoder  
2451 Brookshire Dr.  
Schenectady, NY 12309  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JAMES A. YODER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1976.	:	

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Petitioner, James A. Yoder, c/o Robert A. Yoder, 2451 Brookshire Drive, Schenectady, New York 12309, 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 1976 (File No. 22159).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Bldg. 9, State Campus, Albany, New York, on December 8, 1980 at 2:15 P.M. Petitioner, James A. Yoder, appeared by Robert A. Yoder. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner, a naval officer, incurred a change of domicile and residence from the State of New York to the State of Florida on April 4, 1976.

FINDINGS OF FACT

1. Petitioner, James A. Yoder, did not file a 1976 New York State personal income tax return. However, he did advise the New York State Department of Taxation and Finance that he was serving in the United States Navy and had changed his legal residence to Florida.

2. On March 27, 1978, the Audit Division issued a Notice of Deficiency against petitioner for the year 1976, asserting that personal income tax of

\$226.00 was due, together with interest. Said Notice of Deficiency was based on the grounds that petitioner did not effect a change of his New York State domicile and was taxable as a full-year resident individual.

3. Petitioner, while a domiciliary of the State of New York, entered military service on June 28, 1975 from Schenectady, New York. From January 1, 1976 until April 1, 1976 petitioner was stationed aboard the submarine USS Lafayette. Effective April 1, 1976, he was stationed in Orlando, Florida and resided in an off base apartment until October 1, 1976. Petitioner was next transferred to West Milton, New York where he remained for the balance of the tax year in question.

4. While stationed in Florida, petitioner, on July 6, 1976, executed a Declaration of Domicile and Citizenship with the State and County Tax Assessor, Orange County, Florida. Said declaration indicated that petitioner had moved to Orange County, Florida, intended to make his legal residence in said county and did not intend to return to his former domicile in Schenectady, New York. Petitioner also registered to vote in Orange County, Florida on April 6, 1976 and it is his contention that he changed his domicile to Florida on this date.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) states in pertinent part:

"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. -- The burden is upon any person asserting a change of domicile to show that the necessary intention existed."

B. That petitioner did not testify at the hearing held herein with respect to his intent nor did he submit credible documentary evidence which would support that he intended to change his domicile to Florida and has,

therefore, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law.

C. That petitioner, James A. Yoder, was domiciled in New York State, did not maintain a permanent place of abode for the entire year outside the State and spent more than 30 days in New York State during 1976. Accordingly, petitioner was a resident of New York for all of 1976 within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2(b).

D. That the petition of James A. Yoder is denied and the Notice of Deficiency issued March 27, 1978 is sustained.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER