

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Dean P. Meminger :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Year 1975. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Dean P. Meminger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

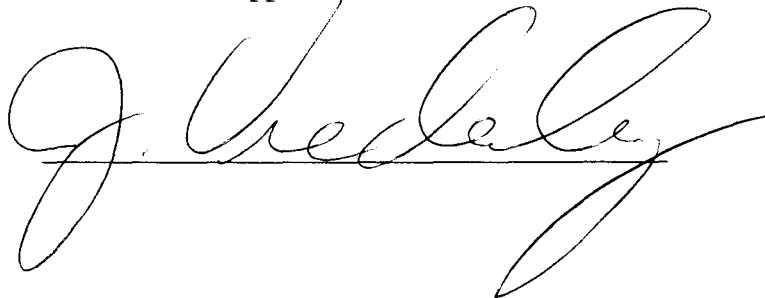
Dean P. Meminger  
607 West End Ave., Apt. 1B  
New York, NY 10024

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  
29th day of December, 1982.

Kathy Appenbach  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Dean P. Meminger :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

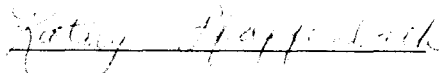
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Andrew S. Roffe the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Andrew S. Roffe  
Roffe & Roffe  
122 E. 42nd St.  
New York, NY 10168

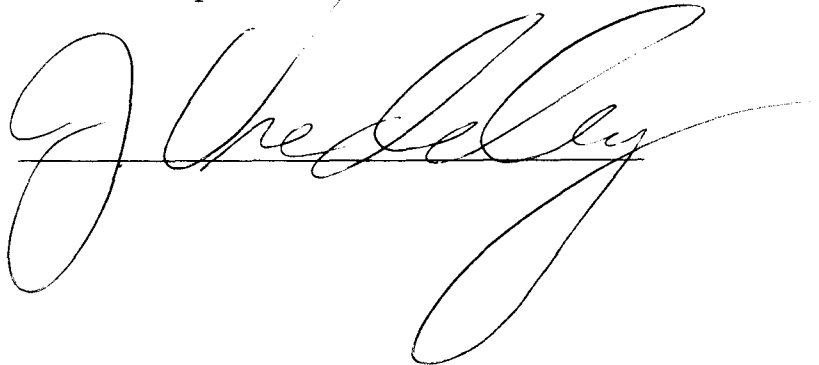
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
29th day of December, 1982.

  
\_\_\_\_\_  
Notary Public

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 29, 1982

Dean P. Meminger  
607 West End Ave., Apt. 1B  
New York, NY 10024

Dear Mr. Meminger:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Andrew S. Roffe  
Roffe & Roffe  
122 E. 42nd St.  
New York, NY 10168  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DEAN P. MEMINGER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

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Petitioner, Dean P. Meminger, 607 West End Avenue, Apartment 1B, New York, New York 10024, 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 1975 (File No. 24810).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1982 at 9:15 A.M. Petitioner appeared by Roffe & Roffe, P.C. (Andrew S. Roffe, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a domiciliary and resident of the State of New York during the year 1975.

FINDINGS OF FACT

1. For the taxable year 1975 petitioner, Dean P. Meminger, filed a New York personal income tax nonresident return.

2. On November 23, 1977, the Audit Division issued to Mr. Meminger, c/o W.F. Sports Enterprises (sic), a Statement of Audit Changes proposing additional personal income tax under Article 22 of the Tax Law for the year 1975 in the amount of \$8,783.08, plus interest. Thereafter, on June 29, 1978, the Audit

Division issued a Notice of Deficiency, asserting against petitioner the additional tax due in the aforementioned amount.

By letter dated September 17, 1976, the Audit Division had requested further information from petitioner (c/o W.F. Sports Enterprises) regarding his change of status from New York resident to nonresident. The Audit Division received no response and so made another request for information on December 17, 1976. Again, petitioner did not respond. The Statement of Audit Changes therefore offered the following explanation for the proposed additional tax: "As you did not reply to our letters of September 17, 1976, or December 17, 1976, your 1975 New York State Personal Income Tax Return has been recomputed taxing your entire Federal [adjusted gross] income, and allowing the standard deduction and one exemption...".

3. From 1967 to 1971 petitioner attended Marquette University in Milwaukee, Wisconsin. In the National Basketball Association ("NBA") player selection draft of Spring, 1971, petitioner was selected by the New York Knickerbockers and signed a contract with the Knicks in May of that year. Petitioner continued playing for the Knicks through the 1973-1974 NBA season.

4. In Autumn, 1971, petitioner signed a two-year lease for an apartment situated at 440 East 23rd Street in Manhattan. He shared the apartment with his brother Robert who, with money contributed by his parents, paid one-half the rent. The furnishings in the apartment were owned by Dean and Robert. Petitioner renewed the lease in 1973.

5. At the completion of the 1973-1974 season, the NBA conducted an expansion draft in order to provide players for the new NBA franchise located in New Orleans. The rights to petitioner's services were selected by the New

Orleans franchise, which shortly thereafter traded those rights to the Atlanta Hawks.

6. Early in September, 1974, petitioner traveled to Atlanta in order to negotiate a contract with the Hawks and to locate an apartment. On September 21, 1974, petitioner signed a uniform player contract with the Hawks, which contract provided for his employment for one year, commencing September 1, 1974, and for an additional year of employment at the Hawks' option. Sometime during the latter part of September, petitioner signed a one-year lease for an apartment located at 4073 Windy Rush Drive, East Point, Georgia. On September 24 and 25, petitioner purchased \$3,583.53 worth of furnishings for the apartment.

7. The Hawks exercised their option to employ petitioner for an additional year, and petitioner renewed his lease on the East Point apartment.

8. The Hawks' 1975 NBA schedule ran from January 1 through April 5 (in the 1974-1975 season) and from October 23 through December 27 (in the 1975-1976 season). By the terms of the uniform player contract, petitioner was required to attend training camp for four weeks prior to the first game of each season.

When the Hawks played in New York (on January 28 and November 16) all players, including petitioner, were required to lodge in a particular hotel.

During the period April 6 through September 24, petitioner conducted several camps and had speaking engagements in connection with his employment by the Hawks. Except when so occupied, he stayed with his girl friend at her apartment in New York, where his son also resided. While in New York, petitioner also conferred with his business agent at W.F. Sports Enterprises, Inc. ("W.F. Sports").

9. Mr. Meminger employed the services of W.F. Sports, located at 370 Lexington Avenue, Manhattan, to represent him in all his business and financial

affairs. Petitioner maintained savings and checking accounts in New York, which were managed by W.F. Sports.

10. During petitioner's stint with the Hawks, he continued to pay one-half the rent on the apartment in Manhattan. Petitioner believed that the building would be converted to a cooperative property and therefore constitute a good investment.

11. At the formal hearing, petitioner testified, "I had no intention of moving back to New York. I had signed actually a two-year contract in Atlanta, and I was looking to renegotiate that contract." Petitioner anticipated that the contacts and reputation he developed while in Atlanta would lead to business opportunities for him there when his playing days were ended.

12. Upon completion of the 1975-1976 NBA season in May, 1976, petitioner was unable to come to terms with the Hawks on a new contract. In that month, petitioner left Atlanta, relinquishing his apartment, and moved to New York to conclude contractual negotiations with the Knicks. Petitioner resided with his girl friend until Fall, 1976, at which time he purchased a cooperative apartment located at 607 West End Avenue. On January 1, 1977, petitioner signed a contract with the Knicks and played for them until his release in October, 1977.

13. For the year 1975, petitioner filed with the State of Georgia a Form 500, Individual Income Tax Return Resident and Non-resident, stating therein that he was a "part year resident" from January 1 through April 15 and from September 15 through December 31. Petitioner paid Georgia taxes in the amount of \$3,985.69.

14. Petitioner's 1975 federal income tax return reflected two personal exemptions, payment of \$750.00 to a Keogh retirement plan, and itemized deductions totaling \$14,227.58.

CONCLUSIONS OF LAW

A. That according to the definitions furnished by section 605 of the Tax Law (as in effect during the year in question), a resident individual is one who is domiciled in New York unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere and spends not more than 30 days of the taxable year in this state. Section 605(a)(1). If not domiciled in New York, an individual may nonetheless be deemed a resident for tax purposes if he maintains a permanent place of abode in New York and spends more than 183 days of the taxable year in New York (unless in the armed forces during an induction period). Section 605(a)(2). Thus, the initial inquiry is whether petitioner was a domiciliary of New York or of Georgia during 1975.

B. That a change of domicile from New York to Georgia would require on petitioner's part an intent to give up the old and take up the new, coupled with his acquisition of a residence in Georgia. In determining petitioner's intent, due weight must be given to his declarations, but such declarations will not be conclusive if contradicted by his actions. 20 NYCRR 102.2(d)(2).

Despite petitioner's declarations that he intended to remain permanently in Georgia from September, 1974 thenceforward, his conduct bespeaks an intention to retain his ties to New York and to return there in the future. In his 1975 Georgia tax return, he stated that he was not a resident of that state for the period April 16 through September 14; during that period he passed most of his time in New York with his girl friend and son. Furthermore, petitioner retained his New York financial advisors and bank accounts, and his apartment in Manhattan



with some of his personal effects and furnishings. "[T]hat is properly the domicil of a person where he has his true, fixed, permanent home and principal establishment and to which whenever he is absent, he has the intention of returning." 17 N.Y. JUR. Domicil and Residence §2.

In contrast, petitioner's one-year contract with the Hawks (with an option to renew) and his one-year leasehold (renewed for another year) do not suggest a permanent relocation to Georgia. Such arrangements are more in the nature of a temporary work assignment in Georgia, of uncertain duration. Matter of Klein v. State Tax Comm., 55 A.D.2d 982 (3d Dept.), affd. mem. 43 N.Y.2d 812.

Petitioner, a New York domiciliary who spent more than 30 days of the year 1975 in this state, was a resident of this state for personal income tax purposes.

C. That the Audit Division is hereby directed to recompute the deficiency issued against petitioner, taking into account his New York itemized deduction, taxes he paid to the State of Georgia, his contribution to an individual retirement plan and his New York personal exemptions.

D. That the petition of Dean P. Meminger is granted to the extent indicated in Conclusion of Law "C"; that accordingly, the Audit Division is directed to modify the notice of deficiency issued on June 29, 1978; and that except as so modified, the deficiency is in all other respects sustained.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

*Robert W. Burdick*  
ACTING PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*William J. [Signature]*  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

CLAIM CHECK NO. MPUS

Y. 12227

☐ HOLD

DATE

1/6/83

1ST NOTICE

**FINAL NOTICE**  
2ND NOTICE

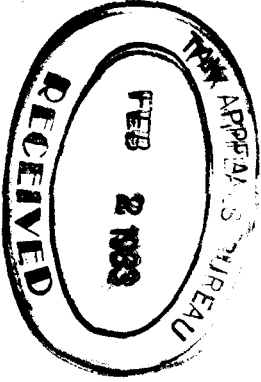
RETURN

1/22/83

Detached from  
PS Form 3840-A  
Oct. 1980

Warren

*For 10 #100  
1/17/83  
1/24/83*



Dean F. Meminger

607 West End Ave., Apt. 1B

New York, NY 10024

CANCELLED



**CERTIFIED**

**250 844 352**

**MAIL**

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

December 29, 1982

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607 West End Ave., Apt. 1B  
New York, NY 10024

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Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Andrew S. Roffe  
Roffe & Roffe  
122 E. 42nd St.  
New York, NY 10168  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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	:	
DEAN P. MEMINGER	:	DECISION
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DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER