

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Raymond Tower

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:

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 :  
1975.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Raymond Tower, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond Tower  
42 Cluny Dr.  
Toronto, Ontario, CANADA M4W2P7

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  
9th day of April, 1982.

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

April 9, 1982

Raymond Tower  
42 Cluny Dr.  
Toronto, Ontario, CANADA M4W2P7

Dear Mr. Tower:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RAYMOND S. TOWER : 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, Raymond S. Tower, 42 Cluny Drive, Toronto, Ontario, Canada M4W 2P7, 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. 26043).

A small claims hearing was scheduled at the offices of the State Tax Commission, State Campus, Building 9, Room 107, Albany, New York, on May 1, 1981 at 9:15 A.M. However, on April 27, 1981 petitioner Raymond S. Tower informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and that based on the entire record contained in the file, the case was being submitted to the State Tax Commission. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether petitioner, a Canadian citizen, was domiciled in and a resident of New York State during the period January 1, 1975 to April 30, 1975.

FINDINGS OF FACT

1. Petitioner, Raymond S. Tower, filed a separate New York State Income Tax Nonresident Return for 1975 on May 10, 1976 within the extended due date granted. On such return petitioner indicated a period of New York residence from January 1, 1975 to April 30, 1975 (four months).

2. For federal income tax purposes, petitioner filed a separate U.S. Individual Income Tax Return, form 1040, as a resident alien, this term generally denoting an alien other than a transient or sojourner who is present in the United States with no definite intention as to the length of stay in this country. The tax shown due was computed on income from all sources, including sources outside the United States.

3. On October 5, 1976, a Statement of Audit Changes was issued to petitioner which indicated the following:

"A resident alien of the United States, domiciled and resident of New York State, (sic) is taxable on total income from all sources to the extent such income is reportable for Federal income tax purposes. During such period, no allocation of income is allowed to sources within and without the State of New York."

On March 5, 1979, the Audit Division issued a Notice of Deficiency for \$772.82 plus interest.

4. The Audit Division contends that during 1975 petitioner was a resident alien of the United States until April 30, that he was a resident and domiciliary of New York State until said date, and that a change of domicile to Canada occurred after said date.

5. Petitioner contends that for New York State income tax purposes he was a nonresident alien.

6. Federal form 4683, which was included with petitioners federal return, is filed by an individual who by definition is a "United States person", one who is a citizen or resident of the United States.

7. While in New York State, petitioner lived in furnished quarters provided by his employer and spent in excess of thirty days in New York State.

These premises were not maintained by petitioner subsequent to his departure from New York on April 30, 1975.

8. In his letter of August 30, 1976 to the Audit Division, petitioner states that he was a resident of and domiciled in New York State during the period January 1 to May 1, 1975.

9. Per Schedule 1 attached to his 1975 U.S. Individual Income Tax return, form 1040, petitioner stated that he was a Canadian citizen who resided in the United States until May 1, 1975 at which time he returned to Canada and became a nonresident alien of the United States.

10. In his letter dated October 25, 1976 to the Audit Division, petitioner states that during 1975 he was a Canadian citizen domiciled in Canada and did not spend more than 183 days within New York State during 1975.

11. No evidence was submitted regarding petitioners intentions, status claimed for Canadian income tax purposes, or the type of visa application made to the United States Immigration and Naturalization Service.

#### CONCLUSIONS OF LAW

A. That for federal income tax purposes petitioner's status was that of a resident alien. As such, he is taxable for federal income tax purposes in the same manner as any other United States citizen, regardless of the country in which income originates and regardless of his place of residence (Treas. Reg. Section 1.1-1, I.R.C. Section 1).

B. That the starting point in determining the New York adjusted gross income of a resident taxpayer is his federal adjusted gross income (Section 612 of the Tax Law).

C. That petitioner submitted conflicting documentation regarding both his domicile and residency. Accordingly, he has failed to sustain his burden of proof pursuant to section 689(e) of the Tax Law to show that his domicile during the period January 1, 1975 to April 30, 1975 was other than New York State.

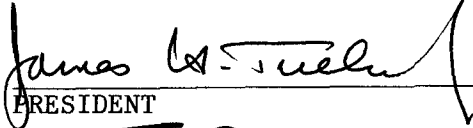
D. That petitioner was domiciled in New York State during the period at issue and spent more than 30 days in New York during said period. Therefore he was a resident of New York in accordance with Section 605(a)(1) of the Tax Law.

E. That the petition of Raymond S. Tower is denied and the Notice of Deficiency dated March 5, 1979 is sustained, together with such additional interest as may be lawfully owing.

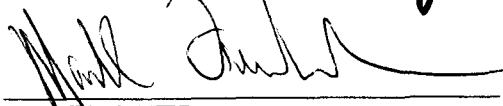
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER