

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Richard J. Hansen	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1977.	:	

State of New York  
County of Albany

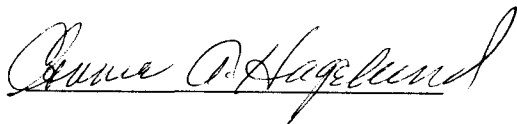
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Richard J. Hansen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard J. Hansen  
c/o Rothman & Rothman  
31 Oak St., P.O. Box 568  
Patchogue, NY 11772

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  
4th day of February, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Richard J. Hansen :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
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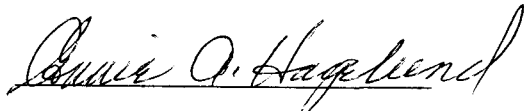
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Judd M. Rothman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Judd M. Rothman  
Rothman & Rothman  
31 Oak St., P.O. Box 568  
Patchogue, NY 11772

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  
4th day of February, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

February 4, 1983

Richard J. Hansen  
c/o Rothman & Rothman  
31 Oak St., P.O. Box 568  
Patchogue, NY 11772

Dear Mr. Hansen:

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  
Judd M. Rothman  
Rothman & Rothman  
31 Oak St., P.O. Box 568  
Patchogue, NY 11772  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
RICHARD J. HANSEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

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Petitioner, Richard J. Hansen, c/o Rothman & Rothman, 31 Oak Street, P.O. Box 568, Patchogue, New York 11772, 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 1977 (File No. 24541).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1982 at 2:45 P.M. Petitioner appeared by Ronald Carman of Rothman & Rothman, CPA's. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether petitioner was domiciled in, and a resident of the State of New York during the taxable year 1977.

FINDINGS OF FACT

1. Richard J. Hansen (hereinafter petitioner) untimely filed a New York State Income Tax Nonresident Return for the year 1977 whereon he reported income of \$1,000.00 attributable to New York sources. Said income was derived from Talent & Residuals, Inc., a Chicago corporation. Income of \$23,901.99, derived from Nassau Sports, 100 Ring Road West, Garden City, New York, was omitted from New York State income.

2. On July 25, 1978, the Audit Division issued a Statment of Audit Changes to petitioner wherein he was held to be a resident of New York State for 1977. As such, his entire Federal income was held taxable. Additionally, certain claimed expenses which were held to be "not proper deductions in computing adjusted gross income" were disallowed. However, since these adjustments were uncontested, they are not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioner on October 13, 1978 asserting personal income tax of \$849.60, plus penalty and interest of \$120.77, for a total due of \$970.37. Said penalty was imposed pursuant to section 685(a)(1) of the Tax Law for petitioner's failure to timely file his return.

3. Petitioner's address, as reported on his nonresident return, was c/o A. Kaminsky (his attorney), 18 West 55th Street, New York City. His Wage and Tax Statement from Talent & Residuals, Inc. reported his address as 20 West Street, Northport, New York 11768, while his Wage and Tax Statement issued from Nassau Sports reported his address as 3401 West Lancaster, Fort Worth, Texas. The return address listed on the envelope in which his return was mailed also showed the Northport, New York address.

4. Petitioner's 1976 return indicated that he resided in Northport, New York.

5. Petitioner alleged that he was a domiciliary and resident of the State of Texas during 1977. He claimed to have resided at 2200 Texaco Road, Fort Worth, Texas during 1977 and that the Northport, New York address was his parents' home, which he used solely as a mailing address.

6. During 1977 petitioner was a professional hockey player for the New York Islanders' Central Hockey League farm team, the Fort Worth Texans.

7. Petitioner, a native of the Bronx, New York, was a twenty-two year old single individual during 1977.

8. Petitioner played four games with the New York Islanders during the 1976-1977 season, none of which were played in New York. The Forth Worth Texans played no games in New York during taxable year 1977.

9. Petitioner submitted documentation evidencing that he maintained a savings account in Forth Worth, Texas commencing October 17, 1977.

10. Petitioner provided no information with respect to the number of days he spent in New York State during 1977.

#### CONCLUSIONS OF LAW

A. That NYCRR 102.2(d) provides in pertinent part that:

(1) Domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent.

(2) 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. No change of domicile results from a removal to a new location if the intention is to remain there for a limited time.

B. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he had a bona fide intention of making his fixed and permanent home in Texas. Indeed, it would be reasonable to assume that his intent was to ultimately be promoted to the New York Islanders and return to New York. Accordingly, petitioner is deemed a domiciliary of New York during taxable year 1977.

C. That NYCRR 102.2(b) provides 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.

D. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he has satisfied all three of the aforestated requirements. Accordingly, petitioner is deemed a resident of New York State during taxable year 1977.

E. That the petition of Richard J. Hansen is denied and the Notice of Deficiency dated October 13, 1978 is hereby sustained together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER