

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
William T. Harris III	:	
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 Years	:	
1975 & 1976.	:	

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon William T. Harris III, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William T. Harris III
P.O. Box 163
Rich, MS 38662

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
27th day of May, 1983.

David Parchuck

Annice O'Connell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Tax under Article 22 of the Tax Law for the Years :
1975 & 1976. :

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon James C. Oster the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James C. Oster
Groben, Liddy, Cardamone & Gilroy
P.O. Box 423, 185 Genesee St.
Utica, NY 13503

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
27th day of May, 1983.

David Parchuck

Annice A. O'Connell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

William T. Harris III
P.O. Box 163
Rich, MS 38662

Dear Mr. Harris:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James C. Oster
Groben, Liddy, Cardamone & Gilroy
P.O. Box 423, 185 Genesee St.
Utica, NY 13503
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WILLIAM T. HARRIS III	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioner, William T. Harris III, P.O. Box 163, Rich, Mississippi 38662, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1975 and 1976 (File No. 26654).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 15, 1982 at 9:15 A.M. Petitioner appeared by Groben, Liddy, Cardamone & Gilroy (James C. Oster, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly considered petitioner to be taxable as a resident of New York during 1975.

II. Whether the Audit Division properly determined that the income petitioner received in 1976 as a writer was attributable to his activities while he was a resident of New York.

FINDINGS OF FACT

1. Petitioner William T. Harris III filed a New York State Income Tax Nonresident Return for the year 1975. On this return, petitioner listed his

address as being in Rich, Mississippi. Petitioner reported 26% of his income as a writer as being attributable to New York State.

2. Petitioner filed a New York State Income Tax Nonresident Return for the year 1976. Petitioner reported his address as being in Rich, Mississippi. He did not attribute any of his income to New York State on this return. The accountant who prepared petitioner's 1976 return attached a letter to this return which stated, in part:

"We have been retained by Mr. William Thomas Harris, III, Rich, Mississippi 38662, for the handling of his tax matters. Mr. Harris was a resident of New York City in 1975 and for a number of years prior thereto.

Mr. Harris, a former resident of Mississippi, re-established residency here in Mississippi at the beginning of 1976. Mr. Harris is a qualified voter in the State of Mississippi, and he filed a Mississippi income tax return for 1976."

3. Petitioner listed his occupation as a writer on his returns for both 1975 and 1976.

4. It was petitioner's practice during the years in issue to simply sign the tax returns which were prepared by an accountant.

5. On March 16, 1979 the Audit Division issued a Notice of Deficiency which asserted a tax due of \$7,282.53, plus interest of \$1,821.36, for a total amount due of \$9,103.89. The Statement of Audit Changes, which was issued on June 28, 1978, stated, to the extent relevant herein, that based upon information submitted, petitioner was taxable as a resident of New York State for 1975 and therefore taxable on the total federal income for that year. The Statement of Audit Changes also stated that, for the year 1976, petitioner's income as a writer was deemed to be attributable to petitioner's writing while he was a resident of New York and therefore fully taxable by New York. Consequently, the refund claimed by petitioner on his New York State Income Tax Nonresident

Return for 1976 was reduced as a result of the additional income which the Audit Division concluded was taxable by New York.

6. Petitioner was born in Jackson, Tennessee. He moved to Rich, Mississippi when he was three years old. Petitioner attended grade school and high school in Rich. Thereafter, petitioner attended Baylor University in Waco, Texas.

7. Petitioner graduated from college in 1963. From that time until 1967, petitioner resided in Waco and worked as a reporter for the Tribune Herald in Waco.

8. In 1967 petitioner moved to New York City. Petitioner wrote freelance articles for magazines for one year. Thereafter, petitioner went to work for the Associated Press as a reporter. In February, 1974 petitioner moved back to Rich, Mississippi and in April, 1974 he resigned from the Associated Press.

9. When petitioner was working for the Associated Press, he was a member of the New York Press Club. He did not maintain that membership after he resigned from the Associated Press.

10. Prior to February 1974, petitioner rented an apartment in New York City. The lease to the apartment was in another individual's name. After February, 1974, petitioner did not have a residence in New York City. Petitioner took some of his possessions with him to Rich in February, 1974 and removed his remaining possessions a couple of months later.

11. The reason petitioner returned to Rich was because his parents were in poor health and, therefore, he felt that he was needed at home. When petitioner returned to Mississippi, his time was occupied working on a novel and taking care of his parents.

12. During 1975 petitioner returned to New York on three occasions. In January, 1975 petitioner went to New York City for about three weeks to meet with his editor and his agent. After his trip to New York City, petitioner went to the West Indies for a vacation and from there back to Rich. Petitioner returned to Rich on or about the end of February, 1975. In July and August, 1975 petitioner vacationed on Long Island. At the end of August, 1975 petitioner returned to Rich. In November, 1975 petitioner visited New York City for approximately four weeks. While he was in New York City in November, petitioner met with his agent and editor.

13. In 1976 petitioner was in New York for a period of time of less than a month.

14. Petitioner began writing his book, Black Sunday, in 1973 while residing in New York City. He wrote about 120 pages of the book while in New York. Petitioner finished writing his book while residing in Mississippi.

15. Petitioner, received royalties for the book from G. P. Putnam Publishing Company. The publisher is located in New York. The checks from the publishing company would be sent to petitioner's agent. The agent would take out her commission and mail the balance to petitioner. Petitioner's agent was also located in New York.

16. During the periods in issue, petitioner had a will which provided that it should be construed according to the laws of Mississippi.

17. Petitioner has been a registered voter only in Mississippi. He voted in Mississippi during the years in issue.

18. Petitioner would go to Rich on holidays during the period he resided in New York.

19. In 1975 and 1976, petitioner had a driver's license from the State of Mississippi.

CONCLUSIONS OF LAW

A. That section 605(a)(2) of the Tax Law provides that: "[a] resident individual means an individual: (2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state...".

B. That petitioner has sustained his burden of proof imposed by section 689(e) of the Tax Law in establishing that he changed his domicile to Mississippi in 1974. Since petitioner was not a domiciliary of New York and spent less than 183 days in this State in 1975, he was not a resident of New York within the meaning and intent of section 605 of the Tax Law and 20 NYCRR 102.2(a).


C. That the income petitioner received in 1976 from the sale of his book is not income from New York sources within the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.2

D. That the petition of William T. Harris III is granted; the Notice of Deficiency issued March 16, 1979 is cancelled; and the Audit Division is directed to authorize a refund of any overpayment resulting from this decision.


DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER