

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Timothy John Sammons : 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 Years :  
1972 - 1973.

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State of New York  
County of Albany

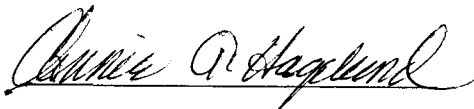
Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Timothy John Sammons, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

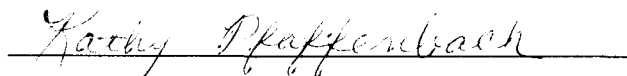
Timothy John Sammons  
P.O. Box 375  
Lafayette, CA 94549

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  
24th day of January, 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

Timothy John Sammons : 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 Years :  
1972 - 1973.

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State of New York  
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton, Maxwell, Newmark, Esqs.  
986 Moraga Rd.  
Lafayette, CA 94549

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  
24th day of January, 1983.

Kathy Pfaffenbach

Conna O'Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

January 24, 1983

Timothy John Sammons  
P.O. Box 375  
Lafayette, CA 94549

Dear Mr. Sammons:

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  
Milton, Maxwell, Newmark, Esqs.  
986 Moraga Rd.  
Lafayette, CA 94549  
Taxing Bureau's Representative

## STATE TAX COMMISSION

On November 24, 1978, petitioner, Timothy John Sammons, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission on the entire record contained in the file.

## ISSUE

Whether petitioner was a "nonresident individual" within the meaning of Section 605 of the Tax Law for the years 1972 and 1973.

## FINDINGS OF FACT

1. Petitioner, Timothy John Sammons, timely filed New York State income tax resident returns for 1972 and 1973. He had been on active duty in the U.S. Navy since September 14, 1971.
2. On February 25, 1975, petitioner filed claims for credit or refund of personal income tax for the years 1972 and 1973. He based his claim for refund by declaring he satisfied all three conditions contained in pamphlet MS-60 (New

York State Personal Income Tax Information for Servicemen and Veterans). The pamphlet defines resident status as follows:

"If, at the time he entered military service, the domicile (legal address) of the serviceman was in New York State, assignment to duty outside the State does not change his New York domicile. He must file his return and pay any tax due in the same manner as any resident individual unless he satisfies all three of the following conditions: (1) he had no permanent place of abode in New York State during the taxable year, (2) he did maintain a permanent place of abode outside New York State during the entire taxable year, and (3) he did not spend more than thirty days in New York State during the taxable year..."

3. On May 8, 1975, the Income Tax Bureau issued a refund denial for the years 1972 and 1973 on the grounds that the residences at which petitioner resided during 1972 and 1973 did not constitute maintaining a permanent place of abode as required under Section 605 of the Tax Law. Accordingly, a Notice of Disallowance was issued on June 30, 1975 in the amounts of \$101.00 and \$178.00 for the taxable years 1972 and 1973, respectively.

4. From January 1, 1972 to March 15, 1972, petitioner, Timothy John Sammons, was stationed at the U.S. Naval Communications Training Center, Pensacola, Florida. He lived in bachelor enlisted quarters the entire time and he was assigned there for training in Naval Communications. From March 15, 1972 to August 4, 1972, he was stationed at the U.S. Naval Base, Newport, Rhode Island. Mr. Sammons did not describe his quarters. However, his transfer orders showed his duty assignment was temporary and would last four months. While in Rhode Island, he received officer indoctrination training. His orders also indicated that the transportation authorized was individual by privately owned vehicle and stated the license number and State as 819DN NY. The orders further indicated that his address while on leave was 2342 Oxford Street, East Meadow, New York.

5. From August 4, 1972 to April 1975, petitioner, Timothy John Sammons, was stationed at the U.S. Naval Base, Great Lakes, Illinois as a commissioned officer. He lived in base bachelor officer's quarters. The record contains no information describing the nature of these quarters. Petitioner stated that he was responsible for all routine cleaning and maintenance of all of the above mentioned quarters.

6. Petitioner maintained no permanent place of abode in New York State during 1972 and 1973. He spent less than 15 days in New York State during the years at issue.

7 No information was submitted regarding petitioner's relation to the communities in which he was stationed or the activities in which he was engaged.

#### CONCLUSIONS OF LAW

A. That a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2(e)). During the period January 1, 1972 to August 4, 1972, the places of abode maintained by petitioner were temporary in nature in accordance with 20 NYCRR 102.2(e). Accordingly, petitioner, Timothy John Sammons, did not maintain a permanent place of abode outside New York State during the entire year.

B. That petitioner, Timothy John Sammons, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the bachelor officer's quarters occupied by him in 1973 constituted a permanent place of abode outside New York State.

C. That since petitioner, Timothy John Sammons, has not met all three conditions as outlined in Finding of Fact "2", above, he is a resident within the meaning and intent of section 605 of the Tax Law. That the petition of

Timothy John Sammons is denied and the Notice of Disallowance dated June 30, 1975 is sustained.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

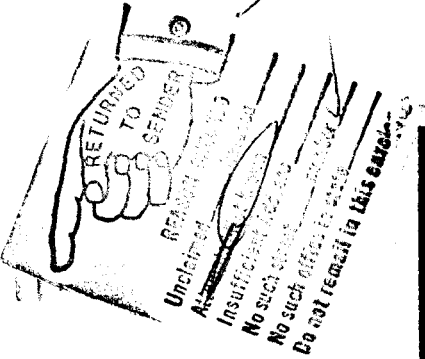
*Robert W. Bonchard*  
ACTING PRESIDENT

*Mark J. Smith*  
COMMISSIONER

*Frank R. Koenig*  
COMMISSIONER

TA 26 (9-79)

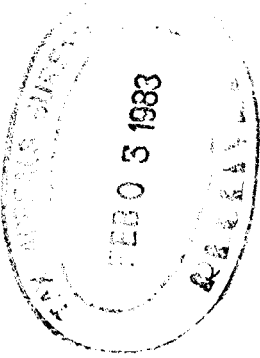
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Name Timothy John Sammons  
1st Notice 28  
2nd Notice  
Return

Timothy John Sammons  
P.O. Box 375  
Lafayette, CA 94549

*No such  
Box #*



**CERTIFIED**  
**P 278 401 711**  
**MAIL**



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

January 24, 1983

Timothy John Sammons  
P.O. Box 375  
Lafayette, CA 94549

Dear Mr. Sammons:

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  
Milton, Maxwell, Newmark, Esqs.  
986 Moraga Rd.  
Lafayette, CA 94549  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
TIMOTHY JOHN SAMMONS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

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Petitioner, Timothy John Sammons, P.O. Box 375, Lafayette, California 94549, 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 1972 and 1973 (File No. 16789).

On November 24, 1978, petitioner, Timothy John Sammons, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission on the entire record contained in the file.

ISSUE

Whether petitioner was a "nonresident individual" within the meaning of Section 605 of the Tax Law for the years 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Timothy John Sammons, timely filed New York State income tax resident returns for 1972 and 1973. He had been on active duty in the U.S. Navy since September 14, 1971.

2. On February 25, 1975, petitioner filed claims for credit or refund of personal income tax for the years 1972 and 1973. He based his claim for refund by declaring he satisfied all three conditions contained in pamphlet MS-60 (New

York State Personal Income Tax Information for Servicemen and Veterans). The pamphlet defines resident status as follows:

"If, at the time he entered military service, the domicile (legal address) of the serviceman was in New York State, assignment to duty outside the State does not change his New York domicile. He must file his return and pay any tax due in the same manner as any resident individual unless he satisfies all three of the following conditions: (1) he had no permanent place of abode in New York State during the taxable year, (2) he did maintain a permanent place of abode outside New York State during the entire taxable year, and (3) he did not spend more than thirty days in New York State during the taxable year..."

3. On May 8, 1975, the Income Tax Bureau issued a refund denial for the years 1972 and 1973 on the grounds that the residences at which petitioner resided during 1972 and 1973 did not constitute maintaining a permanent place of abode as required under Section 605 of the Tax Law. Accordingly, a Notice of Disallowance was issued on June 30, 1975 in the amounts of \$101.00 and \$178.00 for the taxable years 1972 and 1973, respectively.

4. From January 1, 1972 to March 15, 1972, petitioner, Timothy John Sammons, was stationed at the U.S. Naval Communications Training Center, Pensacola, Florida. He lived in bachelor enlisted quarters the entire time and he was assigned there for training in Naval Communications. From March 15, 1972 to August 4, 1972, he was stationed at the U.S. Naval Base, Newport, Rhode Island. Mr. Sammons did not describe his quarters. However, his transfer orders showed his duty assignment was temporary and would last four months. While in Rhode Island, he received officer indoctrination training. His orders also indicated that the transportation authorized was individual by privately owned vehicle and stated the license number and State as 819DN NY. The orders further indicated that his address while on leave was 2342 Oxford Street, East Meadow, New York.

5. From August 4, 1972 to April 1975, petitioner, Timothy John Sammons, was stationed at the U.S. Naval Base, Great Lakes, Illinois as a commissioned officer. He lived in base bachelor officer's quarters. The record contains no information describing the nature of these quarters. Petitioner stated that he was responsible for all routine cleaning and maintenance of all of the above mentioned quarters.

6. Petitioner maintained no permanent place of abode in New York State during 1972 and 1973. He spent less than 15 days in New York State during the years at issue.

7 No information was submitted regarding petitioner's relation to the communities in which he was stationed or the activities in which he was engaged.

#### CONCLUSIONS OF LAW

A. That a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2(e)). During the period January 1, 1972 to August 4, 1972, the places of abode maintained by petitioner were temporary in nature in accordance with 20 NYCRR 102.2(e). Accordingly, petitioner, Timothy John Sammons, did not maintain a permanent place of abode outside New York State during the entire year.

B. That petitioner, Timothy John Sammons, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the bachelor officer's quarters occupied by him in 1973 constituted a permanent place of abode outside New York State.

C. That since petitioner, Timothy John Sammons, has not met all three conditions as outlined in Finding of Fact "2", above, he is a resident within the meaning and intent of section 605 of the Tax Law. That the petition of

Timothy John Sammons is denied and the Notice of Disallowance dated June 30, 1975 is sustained.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

*Robert W. Burchard*  
*Mark J. Hall*  
*Francis Q. Koenig*

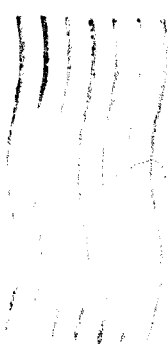
TA 26 (6-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

RECEIVED  
TAX APPEALS BUREAU  
STATE OF NEW YORK  
JUN 11 1983  
ALBANY, N. Y.



*Handwritten signatures and initials.*



**CERTIFIED**

**P 278 401 712**

**MAIL**

Milton, Maxwell, Newmark, Esqs.  
986 Moraga Rd.  
Lafayette, CA 94549

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not forwardable*

*5wd Exp*

*4911*

*RB*

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

January 24, 1983

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P.O. Box 375  
Lafayette, CA 94549

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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  
Milton, Maxwell, Newmark, Esqs.  
986 Moraga Rd.  
Lafayette, CA 94549  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
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for Redetermination of a Deficiency or :  
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ISSUE

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FINDINGS OF FACT

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DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

*Robert W. Burchard*  
*Mark J. Hall*  
*Francis Q. Koenig*