

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles J. Stambaugh :
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 :
1978. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 22nd day of November, 1983, she served the within notice of Decision by certified mail upon Charles J. Stambaugh, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles J. Stambaugh
1055 Hartman Dr.
Indiana, PA 15701

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
22nd day of November, 1983.

Maucha L. Sennelle

Connie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Charles J. Stambaugh :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 22nd day of November, 1983, she served the within notice of Decision by certified mail upon Robert S. Marcus the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert S. Marcus
555 Philadelphia St.
Indiana, PA 15701

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
22nd day of November, 1983.

Maucha L. Drunelle

Connie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 22, 1983

Charles J. Stambaugh
1055 Hartman Dr.
Indiana, PA 15701

Dear Mr. Stambaugh:

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
Robert S. Marcus
555 Philadelphia St.
Indiana, PA 15701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES J. STAMBAUGH	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

Petitioner, Charles J. Stambaugh, 1055 Hartman Drive, Indiana, Pennsylvania 15701, 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 1978 (File No. 35943).

On February 22, 1983, petitioner 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 based on the entire record contained in the file.

ISSUE

Whether petitioner was domiciled in and a resident of New York State during all of 1978.

FINDINGS OF FACT

1. Charles J. Stambaugh ("petitioner") timely filed a New York State Income Tax Resident Return for 1978 on Form IT-200 (Short Form) showing salary or wages of \$16,775.85 and interest and dividends of \$203.56 for a total New York income of \$16,979.41. Petitioner indicated his filing status as single with one exemption.

2. On March 26, 1981, the Audit Division issued to petitioner a Statement of Audit Changes proposing personal income tax due of \$1,281.32, plus interest of \$211.85, for a total due of \$1,493.17. The explanation on the Statement was

"The starting point for computing the New York tax liability is Federal Adjusted Gross Income. Therefore, your tax liability has been recomputed as shown."

Said Statement showed Federal adjusted gross income to be \$27,938.00, which amount was obtained under authorization of Internal Revenue Code section 6103(d). Accordingly, on October 30, 1981, a Notice of Deficiency was issued.

3. Petitioner worked as a field employee for Delta Drilling Company of Indiana, Pennsylvania prior to and during the year 1978. He asserted that during this period of time his residence was determined by the location of the drilling rig(s) he was working on.

4. During 1978, petitioner worked in New York State from May 12, 1978 through October 27, 1978. He submitted a schedule with his petition showing the dates and locations of his work sites during this period.

5. Petitioner alleges that he did not have a residence in New York State (but did keep a mailing address at Whitesville, New York), was a part-year resident of this state, and that the amount of tax due New York should be computed only upon the amount of income earned while a resident of New York and not upon his Federal adjusted gross income for 1978.

6. Petitioner filed a 1978 individual income tax return with the Commonwealth of Pennsylvania showing taxes paid of \$305.35. He checked the nonresident box as his residency status. The address shown on his Pennsylvania tax return for 1978 was Box 128, Whitesville, New York. Said address was also shown on his New York withholding statement.

7. In October of 1981, petitioner filed an amended 1978 New York State income tax return on nonresident Form IT-203. On said return, he indicated that he was a New York State resident for eight months during 1978 and that he was amending his return due to his being a part-year resident.

8. The record does not contain any information as to whether petitioner's stay in Pennsylvania was of a permanent nature, what his intentions were when he left New York State and whether he intended to return to New York State in the future.

CONCLUSIONS OF LAW

A. That 20 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 Pennsylvania. Accordingly, petitioner has failed to show that he was not domiciled in New York or that he changed his domicile to Pennsylvania.

C. That 20 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 above requirements. Accordingly, petitioner is deemed a resident of New York State during taxable year 1978.

E. That the Notice of Deficiency issued on October 30, 1981 is to be revised allowing petitioner a resident tax credit, pursuant to section 620 of the Tax Law, for income taxes paid to the Commonwealth of Pennsylvania in the amount of \$305.35; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 22 1983


PRESIDENT


COMMISSIONER


COMMISSIONER