

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel P. Trudell :
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 :
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 13th day of May, 1983, he served the within notice of Decision by certified mail upon Daniel P. Trudell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel P. Trudell
Medical Department
USS Holand (AS-32)
FPO New York, NY 09536

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
13th day of May, 1983.

David Parchuck

William P. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 13, 1983

Daniel P. Trudell
Medical Department
USS Holand (AS-32)
FPO New York, NY 09536

Dear Mr. Trudell:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DANIEL P. TRUDELL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1977.	:	

Petitioner, Daniel P. Trudell, 5341 Bosworth Road, Virginia Beach, Virginia 23462, 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. 31839).

On May 26, 1982 petitioner waived a small claims hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner maintained a permanent place of abode outside New York State during the period in issue thus entitling him to be treated as a nonresident for personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, Daniel P. Trudell, filed a 1977 New York State Income Tax Nonresident Return on October 16, 1979 claiming a refund of tax withheld in the amount of \$120.81.

2. On August 21, 1980 the Audit Division issued a Notice of Deficiency against petitioner for tax in the amount of \$84.48 plus interest of \$16.74 for

a total of \$101.22 for the year 1977. Said Notice was based on a Statement of Audit Changes which computed petitioner's tax as a resident of New York State.

3. Petitioner is a petty officer and hospital corpsman in the United States Navy. He enlisted in the Navy in June, 1973. At the time of entry, petitioner's domicile was New York State.

4. During the year at issue petitioner was assigned to the USS Roosevelt until June, 1977. For the duration of this assignment petitioner lived on board the ship and had no civilian housing elsewhere nor was he married with dependents living on shore.

5. In June, 1977 petitioner was assigned to the Naval Regional Medical Center, Subic Bay, Philippines. For the remainder of the taxable year in issue, petitioner lived in civilian, off-base housing on shore.

6. At no time during taxable year 1977 did petitioner enter New York State.

7. Petitioner considered himself a nonresident during 1977 because he had no permanent place of abode in New York, spent no time in New York and considered himself to have a permanent place of abode outside New York State.

CONCLUSIONS OF LAW

A. That military assignments do not affect domicile. If an individual was domiciled in New York State at the time of entry into the armed forces, New York will remain his domicile until he establishes a new one (See 50 U.S.C. app. §574). Therefore petitioner was a domiciliary of New York during 1977.

B. That section 605(a)(1) of the Tax Law defines a resident individual as one who is domiciled in New York State, "unless...he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state..."

C. That a room on a ship "can hardly, either in law or in logic, be considered a residence" sufficient to qualify as a permanent place of abode (See Starer v. Gallman, 50 A.D.2d 28, 31). Therefore, petitioner's residence aboard a naval vessel from January to June, 1977 cannot qualify as a permanent place of abode within the meaning and intent of section 605(a)(1).

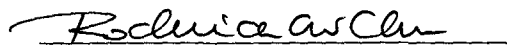
D. That a permanent place of abode outside New York must be maintained for the entire taxable year [20 NYCRR 102.2(b)]. Inasmuch as petitioner's permanent place of abode in the Philippines was only maintained for six months, such residence does not entitle petitioner to nonresident status for income tax purposes.

E. That the petition of Daniel P. Trudell is denied and the Notice of Deficiency issued August 21, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 13 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

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

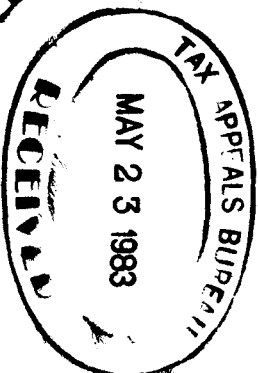
CERTIFIED

P 389 758 965

MAIL

Daniel P. Trudell
Medical Department
USS Holland (AS-32)
FPO New York, NY 09536

NO DIRECTORY SERVICE
APD/FPO MUST HAVE PROPER
ZIP TO EFFECT DELIVERY



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

May 13, 1983

Daniel P. Trudell
Medical Department
USS Holand (AS-32)
FPO New York, NY 09536

Dear Mr. Trudell:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DANIEL P. TRUDELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1977.	:	

Petitioner, Daniel P. Trudell, 5341 Bosworth Road, Virginia Beach, Virginia 23462, 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. 31839).

On May 26, 1982 petitioner waived a small claims hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner maintained a permanent place of abode outside New York State during the period in issue thus entitling him to be treated as a nonresident for personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, Daniel P. Trudell, filed a 1977 New York State Income Tax Nonresident Return on October 16, 1979 claiming a refund of tax withheld in the amount of \$120.81.

2. On August 21, 1980 the Audit Division issued a Notice of Deficiency against petitioner for tax in the amount of \$84.48 plus interest of \$16.74 for

a total of \$101.22 for the year 1977. Said Notice was based on a Statement of Audit Changes which computed petitioner's tax as a resident of New York State.

3. Petitioner is a petty officer and hospital corpsman in the United States Navy. He enlisted in the Navy in June, 1973. At the time of entry, petitioner's domicile was New York State.

4. During the year at issue petitioner was assigned to the USS Roosevelt until June, 1977. For the duration of this assignment petitioner lived on board the ship and had no civilian housing elsewhere nor was he married with dependents living on shore.

5. In June, 1977 petitioner was assigned to the Naval Regional Medical Center, Subic Bay, Philippines. For the remainder of the taxable year in issue, petitioner lived in civilian, off-base housing on shore.

6. At no time during taxable year 1977 did petitioner enter New York State.

7. Petitioner considered himself a nonresident during 1977 because he had no permanent place of abode in New York, spent no time in New York and considered himself to have a permanent place of abode outside New York State.

CONCLUSIONS OF LAW

A. That military assignments do not affect domicile. If an individual was domiciled in New York State at the time of entry into the armed forces, New York will remain his domicile until he establishes a new one (See 50 U.S.C. app. §574). Therefore petitioner was a domiciliary of New York during 1977.

B. That section 605(a)(1) of the Tax Law defines a resident individual as one who is domiciled in New York State, "unless...he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state..."

C. That a room on a ship "can hardly, either in law or in logic, be considered a residence" sufficient to qualify as a permanent place of abode (See Starer v. Gallman, 50 A.D.2d 28, 31). Therefore, petitioner's residence aboard a naval vessel from January to June, 1977 cannot qualify as a permanent place of abode within the meaning and intent of section 605(a)(1).


D. That a permanent place of abode outside New York must be maintained for the entire taxable year [20 NYCRR 102.2(b)]. Inasmuch as petitioner's permanent place of abode in the Philippines was only maintained for six months, such residence does not entitle petitioner to nonresident status for income tax purposes.

E. That the petition of Daniel P. Trudell is denied and the Notice of Deficiency issued August 21, 1980 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 13 1983


PRESIDENT


COMMISSIONER


COMMISSIONER