

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John J. Wall, Jr. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976.

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State of New York  
County of Albany

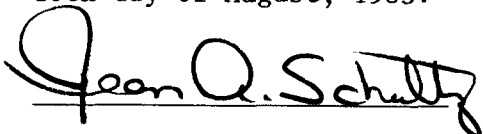
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of August, 1983, she served the within notice of Decision by certified mail upon John J. Wall, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John J. Wall, Jr.  
224 E. 53rd St.  
New York, NY 10022

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  
10th day of August, 1983.

  
Jean Q. Schultz

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

  
Connie A. Hagelund

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

August 10, 1983

John J. Wall, Jr.  
224 E. 53rd St.  
New York, NY 10022

Dear Mr. Wall:

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 & 1312 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

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In the Matter of the Petition  
of  
JOHN J. WALL, JR.  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Articles 22  
and 30 of the Tax Law for the Year 1976.

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DECISION

Petitioner, John J. Wall, Jr., 224 East 53rd Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 31195).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1982 at 10:45 A.M., with all briefs to be submitted by December 21, 1982. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner effected a change of domicile from New York State and New York City to California on or about March 1, 1976.

FINDINGS OF FACT

1. Petitioner herein, John J. Wall, Jr., timely filed a New York State and New York City resident income tax return for the year 1976. On said return petitioner reported wage income of \$3,824.32 and interest income of \$31.50, for a total New York income of \$3,855.82. Petitioner's return did not indicate that he had incurred a change of his New York State domicile during the year

1976; however, said return did indicate that petitioner was not a resident of New York City for the entire year.

2. On March 3, 1980, the Audit Division issued a Notice of Deficiency to petitioner for the year 1976, imposing additional New York State and New York City personal income tax of \$1,751.42, plus interest of \$429.44, for a total due of \$2,180.86. The aforementioned Notice of Deficiency was based on a Statement of Audit Changes dated February 8, 1980, wherein total New York State and New York City income for 1976 was increased to \$22,121.00 since "The starting point for computing the New York tax liability is the Federal adjusted gross income".

3. From December 11, 1972 to on or about March 1, 1976, petitioner was employed full time by American Airlines in New York City. Effective on or about March 1, 1976 petitioner was promoted by American Airlines to the position of freight account executive in its offices in San Francisco, California. Petitioner's position with American Airlines in California was a permanent position and constituted a permanent change in his work locale. Petitioner voluntarily interviewed for the position in San Francisco, California and his subsequent transfer to California did not represent a corporate transfer in which petitioner had little voice, but in fact represented a voluntary act on his part.

4. Petitioner left New York State and New York City on or about March 1, 1976 and in doing so, cancelled the lease on his apartment in Fresh Meadows, New York. Once in California, petitioner executed a two year lease for the rental of an apartment in San Francisco. While in California petitioner registered to vote there and he also joined The Oakland Traffic Club. Petitioner opened a bank account in California and closed his bank accounts in New York

State. Petitioner paid state income taxes to California for the year 1976. Mr. Wall retained his New York State driver's license, intending to obtain a California driver's license when the New York license expired.

5. In January, 1977, petitioner was again promoted by American Airlines to the position of supervisor of freight sales training. This position was located in American Airlines' offices in New York City. Accordingly, in January, 1977, petitioner moved back to New York City and leased an apartment at 224 East 53rd Street, New York, New York. Petitioner's job with American Airlines in New York City was a permanent position and constituted a permanent change in his work locale. Petitioner's promotion to the position of supervisor of freight sales training in January, 1977 was a promotion which was entirely unexpected. This job was an excellent position to have in terms of petitioner's career with American Airlines and petitioner testified to the effect that he would not have taken any job in New York City just to get back to New York.

6. Total New York income of \$3,855.82, as reported on petitioner's 1976 return, represented wage and interest income earned by petitioner from January 1, 1976 through February 29, 1976. The difference between reported Federal adjusted gross income (\$22,121.00) and reported New York income (\$3,855.82), to wit \$18,265.18, represented wage income earned by petitioner from March 1, 1976 to December 31, 1976 while living and working in California.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of

Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That petitioner has sustained his burden of proof to show that he changed his domicile from New York State and New York City to California on March 1, 1976. Accordingly, petitioner's 1976 New York State and New York City personal income tax liability is to be recomputed as if he were a resident of New York State and New York City for the period January 1, 1976 to February 29, 1976 and a nonresident for the remainder of the year [Tax Law section 654 and 20 NYCRR 148].

C. That since petitioner had no income from New York State and New York City sources during the period of his nonresidence, he is not required to file a nonresident return for said period [20 NYCRR 148.1(b)].




D. That total New York State and New York City income earned during the resident period is \$3,855.82 and taxable income for the resident period is to be computed prorating both the allowance for personal exemptions [Tax Law section 654(e) and 20 NYCRR 148.20] and the allowance for standard deduction [Tax Law section 654(f) and 20 NYCRR 148.21].

E. That the petition of John J. Wall, Jr. is granted to the extent indicated in Conclusions of Law "B" and "C", supra; that the Audit Division is directed to recompute petitioner's 1976 liability in accordance with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

**AUG 10 1983**

STATE TAX COMMISSION

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER