

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph P. & Margaret A. Connor :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1977. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of July, 1984, he served the within notice of Decision by certified mail upon Joseph P. & Margaret A. Connor, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. & Margaret A. Connor  
56 Broad St.  
Plattsburgh, NY 12901

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
31st day of July, 1984.

David Parchuck

William C. Handlund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 31, 1984

Joseph P. & Margaret A. Connor  
56 Broad St.  
Plattsburgh, NY 12901

Dear Mr. & Mrs. Connor:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH P. CONNOR AND MARGARET A. CONNOR	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

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Petitioners, Joseph P. Connor and Margaret A. Connor, 56 Broad Street, Plattsburgh, New York 12901, 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. 34906).

A small claims hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on October 21, 1983 at 1:15 P.M., with all documents to be submitted by November 11, 1983. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

#### ISSUE

Whether petitioner Joseph P. Connor, who was in active service in the United States Air Force during 1977, was a domiciliary and taxable as a resident of New York State during such year.

#### FINDINGS OF FACT

1. Petitioners, Joseph P. Connor and Margaret A. Connor, filed a New York State Income Tax Nonresident Return (Form IT-203/209) for the year 1977, on which they reported New York income of \$14.79 out of total income of \$24,169.74.

2. On April 9, 1979, the Audit Division issued to petitioners a Statement of Audit Changes whereon their total 1977 income (\$24,169.74) was included as subject to taxation by New York, with tax due thereon computed to be \$770.58.

3. On November 26, 1980, the Audit Division issued to petitioners a Notice of Deficiency asserting additional tax due for 1977 in the amount of \$770.58, plus interest.<sup>1</sup>

4. Joseph P. Connor was born and raised in New York City. He moved to Worcester, Massachusetts in 1958 to attend Holy Cross College, and was married there while attending college. Mr. Connor testified that he considered New York and not Massachusetts as his permanent residence at that time, especially in view of his age and the fact that his parents, brothers and sister still lived at home in New York. Mr. Connor graduated from Holy Cross in 1962 and immediately entered military service in the United States Air Force.

5. In or about 1965, Mr. Connor's father died and his mother decided to purchase a home in New Jersey. Mr. Connor and his mother jointly purchased a home located at 84 LeClerc Avenue, Rivervale, New Jersey in 1965. Mr. Connor's mother, his two brothers and his sister moved into this home in 1965. Mr. Connor was stationed with the Air Force in Columbus, Ohio at this time.

6. In early 1968, Mr. Connor was given orders to go to Viet Nam. In view of these orders, and the obvious inability to take his wife and children with him to Viet Nam, Mr. Connor decided to purchase a home near his family's home in New Jersey. Mr. Connor testified that he wanted his wife and children to be near his mother and siblings for safety and support in the eventuality that he

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<sup>1</sup> Petitioner Margaret A. Connor's name appears solely by virtue of having filed a joint return with petitioner Joseph P. Connor. Accordingly, all references to petitioners pertain solely to Joseph P. Connor.

did not return from Viet Nam. Accordingly, in early 1968, prior to his departure to Viet Nam, Mr. Connor purchased a small three bedroom ranch located at 532 Central Avenue, Rivervale, New Jersey, less than one mile from his mother's home. Mr. Connor testified that this was the only time during his military career that he felt he had a true choice as to the geographic location of his home.

7. Mr. Connor's wife and children moved into the New Jersey home in early 1968 and remained there until his return from Viet Nam in the latter part of 1969. Mr. Connor was next assigned to duty in Washington, D.C. He sold the New Jersey home in November or December of 1969 and used the proceeds to purchase a home in Washington, D.C. However, he still retained his ownership interest in his mother's New Jersey home.

8. Mr. Connor was stationed in Washington, D.C. for four years, after which he was transferred to Seattle, Washington. His wife and children accompanied him to both of these duty stations.

9. In 1975, Mr. Connor's mother became terminally ill with cancer, and he requested of the Air Force a humanitarian transfer to the east coast to be located close to his mother. Mr. Connor requested stationing at Maguire Air Force Base in New Jersey. In response, the Air Force granted his requested transfer, and offered Mr. Connor the choice of a position at the Maguire base at the rank of lieutenant or a position at Plattsburgh (New York) Air Force Base at the rank of major. Mr. Connor chose the Plattsburgh assignment over the Maguire assignment, even though Plattsburgh was somewhat farther away from his mother, in view of the higher rank and better career opportunity it presented. Mr. Connor and his wife and children moved to Plattsburgh in late 1975, lived in housing on the base there for about six months and subsequently bought a

three-story house (with one apartment included therein) located at 56 Broad Street, Plattsburgh, New York. The Connors' have lived in this house from the mid-1976 purchase date through the year at issue and to the present.

10. Mr. Connor retired from the Air Force in September of 1982 after twenty years of service. Beginning with tax year 1982, he has filed tax returns as a New York resident.

11. Mr. Connor's will was executed in New Jersey in 1968 and indicates New Jersey as his residence. He and Mrs. Connor filed State of New Jersey Gross Income Tax Resident Returns (Form NJ-1040) for each of the years 1976 through 1981.<sup>2</sup>

12. Mr. Connor voted in New Jersey (by absentee ballot) in every presidential and congressional election beginning with 1968 and had, as of the date of the hearing, neither registered to vote nor voted in any election in New York State.

13. Mr. Connor obtained his first driver's license in Massachusetts in 1961 or 1962, but since 1968 to the present has been licensed to drive and has always registered his automobiles (and a trailer) in New Jersey. He has not obtained a New York State driver's license nor registered any automobiles in New York State.

14. Mr. Connor attached a statement to each of his New Jersey tax returns claiming he was exempt from the New Jersey income tax. This statement was copied from New Jersey's instruction booklet and provided as follows:

"I am a member of The Armed Forces

- (a) have no abode in New Jersey
- (b) have a 'permanent place of abode' in Plattsburgh, N.Y.
- (c) did not spent 30 days in New Jersey during taxable year.

Thus I am excempt (sic) from New Jersey Income Tax."

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<sup>2</sup>

The New Jersey Gross Income Tax first became effective in 1976.

Mr. Connor did not pay any income tax to New Jersey during any of the years he filed New Jersey returns based upon his belief (expressed by the aforementioned statement) that his income was not subject to taxation by New Jersey.

15. A power of attorney executed by Mr. Connor in 1965, while he was stationed at Otis Air Force Base in Massachusetts, recites his residence as New Jersey.

16. Mr. Connor sold his interest in his mother's New Jersey home to his sister in 1978.

17. Mr. Connor testified that the decision to stay in Plattsburgh was not made in 1977, but rather was made over a period of years after Mr. Connor and his wife and children had been living in the area. More specifically, he notes that his final decision evolved over a period of seven years in Plattsburgh (from his arrival in late 1975 through his 1982 retirement) during which his children were progressing through the school system, and was made in view of his future employment options as the time of his retirement from the Air Force drew near. Mr. Connor's final decision to remain in Plattsburgh was made in 1982 after finding employment opportunities there were more promising than in other geographic areas he had investigated. Mr. Connor asserts that he was a domiciliary and resident of New Jersey and did not change his domicile and resident status to New York until his retirement in 1982.

#### CONCLUSIONS OF LAW

A. That section 605(a) of the Tax Law defines the term "resident individual" as:

"...an individual:

(1) who is domiciled in this state, unless

(A) 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 or...

(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, unless such individual is in active service in the armed forces of the United States."

Domicile may be defined as "the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent." [20 NYCRR 102.2(d)(1)].

B. That 20 NYCRR 102.2(d)(6) provides as follows:

"Federal law provides in effect that for the purposes of taxation, a serviceman is not deemed to have lost his residence or domicile in any state solely by reason of being absent therefrom in compliance with military or naval orders. Thus, such Federal law insures that a serviceman domiciled in New York State would not be deemed a domiciliary for income tax purposes in another state in which he is stationed. On the other hand, a serviceman domiciled in another state who is stationed in New York State would not be deemed a domiciliary, for personal income tax purposes, of New York State. The rule is, generally speaking, that the domicile of a person is in no way affected by service in the armed forces of his country. A change of domicile has to be shown by facts which objectively manifest a voluntary intention to make the new location a domicile. It is possible for a serviceman to change his domicile; however, the requisite intent is difficult to prove."

C. That petitioner Joseph P. Connor's domicile at the time of his entry into the service in 1962 was, by his own admission, New York. The overriding consideration to him in this regard was the fact that his family (his parents and siblings) lived in New York. However, following the death of his father in 1965, Mr. Connor's family moved to New Jersey and, with his help, purchased a home there. In 1968, when confronted with the need to choose a place to situate his wife and children while he was ordered to Viet Nam, Mr. Connor

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<sup>3</sup> 20 NYCRR 102.2(d)(6) was adopted on January 20, 1982.



chose New Jersey and bought a home there. Again, his overriding consideration was the fact that his mother and siblings lived in New Jersey and could provide support to his wife and children. It is clear from his actions and his testimony that Mr. Connor's concept of his domicile was most tightly linked with the location of his family (his mother and siblings). Mr. Connor's ties to New York as his domicile had been effectively severed in 1965 with his mother's move to New Jersey. Furthermore, his voluntary choice of New Jersey in 1968 evidenced his intent and belief that New Jersey and not New York had been established as his domicile and permanent residence.

D. That as of 1977, there is no clear intention shown, either by words or actions on Mr. Connor's part, to change his domicile to Plattsburgh, New York. To the contrary, he had been assigned there by the Air Force as his second choice after Maguire Air Force Base in New Jersey, and only then in an effort to be stationed within reasonable proximity of his terminally ill mother. His purchase of a home away from the air base in 1976 is not inconsistent with prior home purchases made by him while stationed in different geographic locations, and does not establish New York as his domicile. It is noted that Mr. Connor did not sell his ownership interest in his mother's New Jersey home until 1978. Finally, Mr. Connor did not retire from the service until 1982, at which time he decided to remain in Plattsburgh to live and work outside of the military.

E. That, as detailed by the foregoing, Mr. Connor was a domiciliary of New Jersey and not of New York during the year 1977 and thus was not subject to taxation by New York State as a resident individual within the meaning and intent of section 605(a) of the Tax Law and 20 NYCRR 102.2(d)(6).

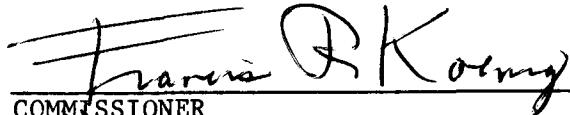
F. That the petition of Joseph P. Connor and Margaret A. Connor is hereby granted and the Notice of Deficiency dated November 26, 1980 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER