

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Westt H. Gatchell	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1977.	:	

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 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Westt H. Gatchell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

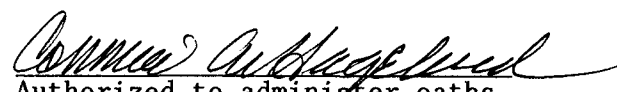
Westt H. Gatchell
Headquarters 5 C.S.G.
AFSC
Robins Air Force Base, GA 31098

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
2nd day of May, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

May 2, 1984

Westt H. Gatchell
Headquarters 5 C.S.G.
AFSC
Robins Air Force Base, GA 31098

Dear Mr. Gatchell:

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

In the Matter of the Petition	:	
	:	
of	:	
	:	
WESTT H. GATCHELL	:	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, Westt H. Gatchell, Headquarters 5 C.S.G., AFSC, Robins Air Force Base, Georgia 31098, 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. 27453).

A small claims hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Room 107, Albany, New York, on July 21, 1982 at 3:30 P.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioner was domiciled in, and a resident of, the State of New York during the taxable year 1977.

FINDINGS OF FACT

1. Petitioner, Westt H. Gatchell, timely filed a New York State Income Tax Resident Return for 1977. He attached a statement to the return stating that since he did not maintain an abode in New York, nor spent more than thirty (30) days in the State of New York during the tax year, he was exempt from paying state tax.

2. On November 3, 1978, the Audit Division issued a Statement of Audit Changes against petitioner for the taxable year 1977 showing personal income tax due of \$96.66 plus interest of \$4.56 on the basis that petitioner was taxable as a resident of New York since he did not qualify for a military exemption. The following explanation was provided:

"To claim a military exemption you must meet all three of the following requirements:

1. You must not maintain a permanent place of abode inside New York State for the entire taxable year.

2. You must maintain a permanent place of abode outside New York State for the entire taxable year. Military barracks or government quarters do not qualify as a permanent place of abode outside New York State for the entire taxable year.

3. You must not be in New York State more than 30 days for the entire taxable year."

3. On April 10, 1979, the Audit Division issued a Notice of Deficiency against petitioner for tax in the amount of \$96.66, plus penalty and/or interest of \$8.09, for a balance due of \$104.75.

4. Petitioner was born and raised in Glens Falls, New York. Prior to his enlistment in the United States Air Force, petitioner lived with his parents in South Glens Falls, New York.

5. On September 1, 1976, petitioner went to Texas for training and continued his training in Mississippi. Petitioner received a two-week leave and was in South Glens Falls for Christmas, 1976, and then on January 4, 1977, he went to Altus Air Force Base, Oklahoma.

6. While petitioner was stationed at Altus Air Force Base during the tax year at issue, he lived in the barracks on the base.

7. Petitioner did not spend more than thirty days in New York during 1977.

8. Petitioner maintained a bank account in New York during the tax year at issue. However, he had an Oklahoma driver's license during 1977 and did not belong to any New York organizations in 1977.

CONCLUSIONS OF LAW

A. That 50 USC §574, the Soldiers and Sailors Civil Relief Act, provides, in part, that for purposes of taxation by any state:

"(A) person shall not be deemed to have lost a residence or domicile in any State...solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in...any other State...solely by reason of being, so absent."

B. That 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. Pursuant to 20 NYCRR §102.2(d)(2),¹ no change of domicile results from a removal to a new location if the intention is to remain there only for a limited time. Petitioner has failed to prove a change in his domicile from New York to Oklahoma. The move to Oklahoma was occasioned as the result of a military assignment. There are no countervailing factors to indicate that petitioner had any definite plan for remaining permanently in Oklahoma. Thus, the presumption established by the Soldiers and Sailors Civil Relief Act must stand. Accordingly, petitioner was domiciled in New York during the taxable year at issue.

C. That pursuant to 20 NYCRR §102.2(b) 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

¹ Regulations cited are those effective for the taxable year 1977.

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. Petitioner resided in a military barracks throughout 1977. He was single during the taxable year in question. Such accommodations are presumed to be temporary in nature, unless the presumption is rebutted by the presentation of significant factors tending to indicate that the accommodations had indicia of "permanency", or that petitioner reasonably regarded such accommodations as a "permanent residence". In the total absence of any indicia of permanency here, petitioner's accommodations in military barracks did not constitute "a dwelling place permanently maintained by the taxpayer...". 20 NYCRR Section 102.2(e). Therefore, he was a New York resident for income tax purposes for the taxable year at issue.

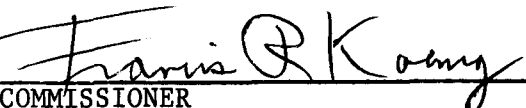
D. That the petition of Westt H. Gatchell is denied and the Notice of Deficiency dated April 10, 1979 is sustained, together with such additional interest which is lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 02 1984


PRESIDENT


COMMISSIONER


COMMISSIONER