

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Anthony Giampaolo : AFFIDAVIT OF MAILING  
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.

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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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Anthony Giampaolo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Giampaolo  
708 Timber Creek  
Lindenwold, NJ 08021

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  
18th day of January, 1984.



  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Anthony Giampaolo  
708 Timber Creek  
Lindenwold, NJ 08021

Dear Mr. Giampaolo:

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	:	
	:	
ANTHONY GIAMPAOLO	:	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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Petitioner, Anthony Giampaolo, 708 Timber Creek, Lindenwold, New Jersey 08021, 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. 34554).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1983 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner effected a change of domicile from New York State to Pennsylvania during the latter part of 1977.

FINDINGS OF FACT

1. Anthony Giampaolo (hereinafter petitioner) and his wife, Helene Giampaolo, timely filed a New York State Income Tax Resident Return for the year 1977 under filing status "married filing separately on one return". On such return there was no indication that petitioner had effected a change of domicile; however, his salary reported for New York State purposes of \$21,101.00 was less than that reported for Federal purposes of \$29,355.00.

2. On January 16, 1981, petitioner submitted a letter to the Audit Division wherein he explained the \$8,254.00 discrepancy in salary reported for New York State purposes as follows:

"The last three (3) months of 1977, Mr. Giampaolo was employed in and a resident of Pennsylvania. Therefore, his portion of the New York State income was adjusted accordingly."

3. On April 3, 1981, the Audit Division issued a Statement of Audit Changes to petitioner wherein his taxable income was increased by \$8,254.00. Said adjustment was made based on the explanation incorporated therein as follows:

"As you filed as a full year resident of New York, all income is reportable to New York regardless of the source."

Information submitted in Mrs. Giampaolo's<sup>1</sup> letter of January 16, 1981 does not indicate a change of residence was effected in 1977, as a permanent residence was still maintained in New York State."

Accordingly, a Notice of Deficiency was issued against petitioner on April 13, 1981 asserting additional personal income tax of \$744.15, plus interest of \$188.21, for a total due of \$932.36.

4. Prior to September, 1977 petitioner, a life-long New York resident, resided with his wife and two children in a home owned jointly by him and his wife, located at 7 Georgia Street, Hicksville, New York 11801.

5. In August, 1977 petitioner was first notified by his employer, General Electric Company ("G.E."), that he was being promoted and transferred to its Philadelphia, Pennsylvania office.

6. On September 6, 1977, petitioner left New York. During the balance of September he stayed at a motel in New Jersey. During most of October, 1977 he stayed at the home of a friend in Media, Pennsylvania.

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<sup>1</sup> Said letter was actually authored by the petitioner herein, not Mrs. Giampaolo, as indicated in the Statement of Audit Changes.

7. On October 18, 1977, petitioner secured an apartment located at 340 Media Station Road, Media, Pennsylvania. Said apartment, which he occupied pursuant to a three (3) year lease effective November 1, 1977, consisted of a living room, bedroom, dining room, kitchen, den and patio.

8. Pursuant to a G.E. employee status form, the effective date of petitioner's promotion and transfer to Philadelphia was October 17, 1977.

9. On an Employee's Tax Withholding Certificate prepared by petitioner on October 27, 1977, he reported that he was a resident of Pennsylvania effective November 1, 1977.

10. Due to marital problems at the time of petitioner's removal from New York, his wife and children remained and continued residing at the Hicksville home. A formal separation agreement was entered into during 1978 and petitioner and his wife were subsequently divorced in 1980.

11. Although petitioner terminated residing at the Hicksville house, he continued to pay the expenses attributable to its maintenance. His decision not to sell the house was based upon his obligation and desire to provide a good environment for his children and the fact that he believed the house represented a good investment.

12. On petitioner's move to Pennsylvania, his personal effects, inclusive of his automobile, were removed from the Hicksville house. His automobile was sold shortly thereafter since G.E. provided him with a company car.

13. Petitioner obtained a Pennsylvania driver's license in or about January, 1978.

14. Petitioner averred that his transfer to Philadelphia was of a permanent nature and that his intention on moving to Pennsylvania was to remain there permanently.

15. During November and December 1977, petitioner made several purchases of furniture for his Media Station Road apartment.

16. On his move to Pennsylvania, petitioner terminated his New York bank accounts and opened accounts in Pennsylvania.

17. Petitioner filed a 1977 Commonwealth of Pennsylvania Individual Income Tax Return as a resident of said state.

18. Petitioner remained in Pennsylvania until November, 1980, at which time he moved to a condominium in Lindenwold, New Jersey.

19. Petitioner spent approximately eight (8) weekend days in New York during November and December 1977 for the purpose of visiting his children.

20. During the period November, 1977 to December 31, 1977, petitioner had no New York State income.

#### CONCLUSIONS OF LAW

A. That 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 [20 NYCRR 102.2(d)(1)]. 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 [20 NYCRR 102.2(d)(2)].

B. That petitioner has sustained his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he changed his domicile from New York State to Pennsylvania on November 1, 1977. Accordingly, petitioner's 1977 New York State personal income tax liability is to be recomputed on the basis that he was a resident of New York State for the period January 1, 1977 to October 31, 1977 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 sources during the period of his nonresidence, he is not required to file a nonresident return for said period [20 NYCRR 148.1(b)].

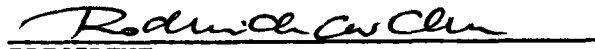
D. That the petition of Anthony Giampaolo is granted to the extent provided in Conclusions of Law "B" and "C", supra, and except as so granted, said petition is, in all other respects, denied.

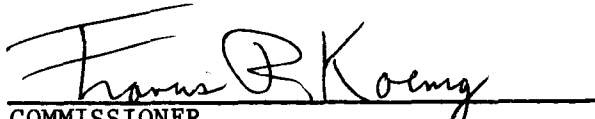
E. That the Audit Division is hereby directed to recompute petitioner's 1977 liability in accordance with the decision rendered herein.

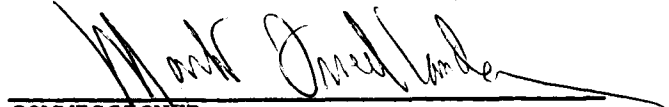
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER