

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

February 29, 1984

Thomas E. Jr. & Ann G. Mannle
2100 Foxhall Rd. N.W.
Washington, DC 20007

Dear Mr. & Mrs. Mannle:

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: Petitioner's Representative
William M. Brodsky
70 Pine St., Suite 5500
New York, NY 10270
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THOMAS E. MANNLE, JR. and ANN G. MANNLE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972, 1973 and 1974.	:	

Petitioners, Thomas E. Mannle, Jr. and Ann G. Mannle, 2100 Foxhall Road, N.W., Washington, D.C. 20007, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972, 1973 and 1974 (File No. 19143).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 5, 1979 at 2:30 P.M. Petitioners appeared by William M. Brodsky, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether income earned by petitioner Thomas E. Mannle, Jr., while in military service, was subject to New York State personal income tax.

FINDINGS OF FACT

1. Petitioner Thomas E. Mannle, Jr. filed a New York State Income Tax Nonresident Return for 1972, which was dated April 12, 1975. Petitioners, Thomas E. Mannle, Jr. and Ann G. Mannle, filed joint New York State income tax nonresident returns for 1973 and 1974. The 1973 return was dated April 12, 1975, and the 1974 return was dated April 14, 1975. The three returns were received in the Department of Taxation and Finance mailroom April 16, 1975.

2. On February 1, 1977, the Audit Division issued a Statement of Audit Changes against petitioners, increasing New York taxable income on the grounds that the income of petitioner Thomas E. Mannle, Jr., while in military service, was subject to taxation by New York State. The Audit Division also asserted penalties for late filing for 1972 and 1973. On March 28, 1977, the Audit Division issued a Notice of Deficiency against petitioners for \$162.55 in tax and \$40.64 in penalty, plus interest, for the year 1972; \$344.66 in tax and \$86.17 in penalty, plus interest, for 1973; and \$703.68 in tax, plus interest, for 1974.

3. Petitioners conceded, for the purposes of this proceeding, that petitioner Thomas E. Mannle, Jr. was a domiciliary of New York State during the years at issue.

No testimony was offered as to the domicile of petitioner Ann G. Mannle, and it was not argued that she was a domiciliary of any state other than New York. In a letter dated April 10, 1974 attached to a copy of petitioners' 1973 Maryland tax return, petitioner Thomas E. Mannle, Jr. stated that his wife "is also a domiciliary of New York".

4. Petitioner Thomas E. Mannle, Jr. resided with his family in Pelham, New York, prior to entering the United States Military Academy at West Point, New York, in 1967. On June 9, 1971, Mr. Mannle graduated from the United States Military Academy and received orders for a permanent change of station to Fort Meade, Maryland, with temporary duty en route at Fort Knox, Kentucky, for basic training. The orders also allowed sixty days graduation leave. Mr. Mannle spent his graduation leave on a motor trip to the West Coast and returned to New York the first week in August 1971. He left for Fort Knox August 6, 1971. Mr. Mannle attended basic training at Fort Knox and proceeded

to Fort Meade, Maryland, as ordered, October 20, 1971. He resided in bachelor officers' quarters at Fort Meade through February 1972. After February 1972, he resided in an apartment in Laurel, Maryland, remaining there until approximately January 17, 1973. On January 17, 1973, Mr. Mannle was transferred on orders for a permanent change of station from Fort Meade to a new permanent duty station at Fort Buckner, Okinawa, Japan, with temporary duty for training at Fort Huachuca, Arizona. The period of temporary duty was January 28, 1973 through June 5, 1973. Mr. Mannle was "en route" between Fort Meade and Fort Huachuca from January 17 to January 28 and resided in bachelor officers' quarters at Fort Huachuca from January 28 until the first or second week in April, when he moved to a furnished mobile home which he rented in Sierra Vista, Arizona.

5. Petitioner Thomas E. Mannle, Jr., received a statutory basic allowance for quarters, provided for under Title 37 United States Code, section 402, while residing in Laurel, Maryland. He did not receive such allowance while residing in bachelor officers' quarters at Fort Meade. He received the statutory basic allowance for quarters the entire time he was at Fort Huachuca, including the period during which he resided in bachelor officers' quarters.

6. Petitioners were married April 17, 1973 in Bisbee, Arizona, during Mrs. Mannle's Easter recess as a school teacher in the Maryland school system. Mrs. Mannle had also resided in Laurel, Maryland, but in a different apartment from Mr. Mannle, during 1972 and the early part of 1973. Mrs. Mannle returned to Maryland about ten days after her marriage to finish teaching for the school year.

7. Mr. Mannle continued to reside in the rented trailer until June 8, 1973 when he returned to Laurel, Maryland, where he helped his wife prepare for

the move to Okinawa. Petitioners also spent a week in Bermuda during this period. Mr. Mannle left for Okinawa July 6, 1973, arriving in Okinawa July 9. Mrs. Mannle joined him in Okinawa in August 1973. At approximately this time (August 1973), petitioners purchased a 1½ acre lot in Arizona.

8. While in Okinawa, petitioners lived in government quarters which were furnished, except for certain items which petitioners owned or subsequently purchased. Petitioners were responsible for the upkeep of the house in which they lived and its yard. Mrs. Mannle taught at the Overseas Dependents' School operated by the Department of Defense in Okinawa. Mr. Mannle played intramural sports and both petitioners took Japanese lessons at the service club. From January to June 1974, while she was in Okinawa, Mrs. Mannle took extension courses from Michigan State University.

9. On June 27, 1974, petitioner Thomas E. Mannle, Jr. was transferred on orders for a permanent change of station from Fort Buckner, Okinawa to Fort Bragg, North Carolina. His reporting date was July 17, 1974. Mr. Mannle was on leave June 27, 1974 to July 31, 1974 and during that period, petitioners spent one week in Hawaii and no more than two and one half weeks visiting Mr. Mannle's family in Pelham, New York and Mrs. Mannle's family in Glen Cove, New York. Petitioners also spent one week in New England while Mr. Mannle was on leave.

10. On August 3, 1974, petitioners moved into a furnished apartment in Fayetteville, North Carolina. On September 7, 1974, after their household goods arrived from Okinawa, petitioners moved to an unfurnished apartment in Fayetteville. They lived in this apartment during the remainder of 1974.

Petitioner Ann G. Mannle taught in the North Carolina public school system for the 1974-1975 school year. She also took a televised course given

by the University of North Carolina. Both petitioners took courses at Fayetteville Technical Institute.

11. Petitioner Thomas E. Mannle, Jr. did not spend more than thirty days in New York State and did not maintain any type of residence in New York State during 1972. Neither petitioner spent more than thirty days in New York State nor maintained any type of residence in New York State during 1973 or 1974.

CONCLUSIONS OF LAW

A. That during the years at issue, section 605 of the Tax Law provided, in part:

"(a) Resident individual. A resident individual means an individual:

- (1) Who is domiciled in this 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..."

(The Personal Income Tax Regulations provide that the permanent place of abode outside of New York State must be maintained for the entire year [20 NYCRR 102.2(b)].)

"(b) Nonresident individual. A nonresident individual means an individual who is not a resident."

B. That petitioner Thomas E. Mannle, Jr. was a domiciliary of New York State during 1972, 1973 and 1974 and petitioner Ann G. Mannle was a domiciliary of New York State during 1973 and 1974.

C. That residence in bachelor officers' quarters does not constitute the maintenance of a permanent place of abode unless such quarters are comparable to off-base housing. There was no showing here that the quarters occupied by petitioner Thomas E. Mannle, Jr. were comparable to off-base housing. Accordingly, petitioner Thomas E. Mannle, Jr. did not maintain a permanent place of abode

outside New York State for the entire year 1972, and thus did not meet all of the statutory criteria for treatment as a nonresident for such year.

D. That petitioner Thomas E. Mannle, Jr. did not maintain a permanent place of abode outside New York State for the entire year 1973 as he resided in bachelor officers' quarters for more than two months. Moreover, a place of abode is not deemed permanent if the abode is maintained only during a temporary stay for the accomplishment of a particular purpose [20 NYCRR 102.2(e)]. Mr. Mannle's stay at Fort Huachuca, Arizona, was clearly temporary in duration and for the accomplishment of a particular purpose. Accordingly, since he did not meet all of the statutory criteria for treatment as a nonresident, Mr. Mannle was a resident of New York for 1973.

E. That petitioner Ann G. Mannle is deemed to have maintained a permanent place of abode outside New York State for the entire year 1973; and since she did not maintain a permanent place of abode in New York State and did not spend more than thirty days in New York, she was a nonresident of New York for 1973.

F. That petitioners, Thomas F. Mannle, Jr. and Ann G. Mannle, are deemed to have maintained a permanent place of abode outside New York State for the entire year 1974. While it appears that there was a brief period of time during which petitioner did not have a permanent place of abode, the lapse was temporary and occurred because petitioners were in transit due to a change in Mr. Mannle's duty assignment. Since petitioners did not maintain a permanent place of abode in New York State and did not spend more than thirty days in New York, they were nonresidents of New York for 1974 within the meaning and intent of section 605(a)(1) of the Tax Law.

G. That the petition is granted to the extent that the deficiency for 1974 is cancelled. The deficiency for 1972 is to be sustained against petitioner

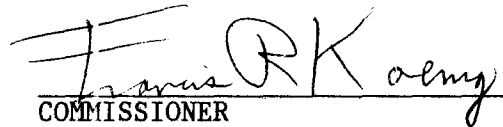
Thomas E. Mannle, Jr. and cancelled insofar as it applies to petitioner Ann G. Mannle, as petitioners were not married in 1972. The deficiency for 1973 is to be recomputed on the basis that petitioner Thomas E. Mannle, Jr. was a resident of New York State and petitioner Ann G. Mannle was a nonresident.

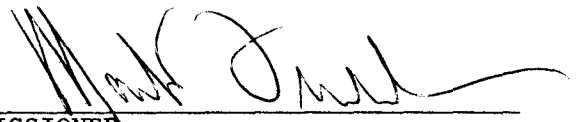
DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984


PRESIDENT


COMMISSIONER


COMMISSIONER