

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William R. Revett : 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 1971. :

State of New York }

ss.:

County of Albany }

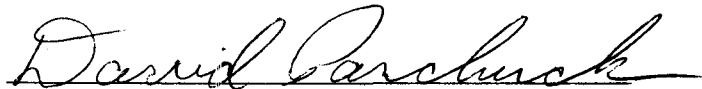
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of April, 1984, he served the within notice of Decision by certified mail upon William R. Revett, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


William R. Revett
1403 Brighton Circle
Austin, TX 78753

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
6th day of April, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

April 6, 1984

William R. Revett
1403 Brighton Circle
Austin, TX 78753

Dear Mr. Revett:

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	:	
WILLIAM R. REVETT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22 :		
of the Tax Law for the Year 1971.	:	

Petitioner, William R. Revett, 1403 Brighton Circle, Austin, Texas 78753, 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 1971 (File No. 13378).

On April 4, 1980 petitioner waived his right to a hearing and requested that a decision be rendered based on the record as presently contained in his file. Upon review of the file the State Tax Commission hereby finds:

ISSUE

Whether petitioner, a domiciliary of New York State, satisfied the three conditions set forth in section 605(a) of the Tax Law, to wit, maintained no permanent place of abode in New York, maintained a permanent place of abode elsewhere and spent not more than 30 days in New York, and is therefore taxable as a nonresident individual.

FINDINGS OF FACT

1. Petitioner, a military serviceman, and his wife, Kathryn C. Revett, timely filed separate New York State resident income tax returns for the year 1971 on combined Form IT-208. On his separate return petitioner reported total New York income of \$8,322.50 and paid a tax thereon of \$220.48.

2. On March 24, 1974 petitioner wrote the New York State Income Tax Bureau requesting a full refund of personal income tax paid for the years 1971, 1972 and 1973. Said claim for refund was based on petitioner's contention that he satisfied the three requirements found in section 605(a) of the Tax Law and was therefore taxable as a nonresident individual. Since petitioner did not earn any income subject to tax to a nonresident, he asserts that refunds are due him for 1971, 1972 and 1973.

3. The Audit Division approved petitioner's claim for refund for the years 1972 and 1973, however, the claim for 1971 was denied by a Notice of Disallowance dated December 23, 1974. Grounds for denial of the 1971 claim for refund were contained in a letter dated October 31, 1974 addressed to petitioner from the Income Tax Bureau wherein it was stated that:

"Under the New York State Personal Income Tax Regulations 102.2(E), a permanent place of abode is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. Since the residence you maintained from January through June of 1971 was for the accomplishment of your training, it is not deemed a permanent place of abode and therefore you are taxable on income earned from all sources for 1971."

4. For the first six months of 1971 petitioner was permanently assigned to a training squadron for operational training purposes at Davis-Monthan Air Force Base, Tuscon, Arizona. During this six-month period, petitioner resided with his wife in a non-military, furnished, 5-room apartment at a cost of \$140.00 per month. Petitioner was simultaneously drawing a quarters allowance from the U.S. Air Force amounting to \$120.00 per month.

5. From June 28, 1971 to July 12, 1971 petitioner attended a basic survival training course at Fairchild Air Force Base in the State of Washington. Petitioner spent the balance of the month of July traveling cross country to

Seymour-Johnson Air Force Base in North Carolina, his next permanent duty station. Petitioner's orders indicate that he was to report to Seymour-Johnson Air Force Base no later than July 31, 1971 and that he would be assigned to a Tactical Air Command Fighter Wing.

6. For the months of August, September and October petitioner and his spouse resided in a non-military, unfurnished, 5-room duplex house rented at a cost of \$115.00 per month plus utility fees. Petitioner was still receiving the \$120.00 per month quarters allowance. For the remaining three months of 1971, and for almost two years thereafter, petitioner and his wife resided in a government provided 6-room duplex house for which he did not pay any rental charges but, in lieu thereof, forfeited his quarters allowance.

7. Petitioner did not spend in excess of 30 days in New York State during 1971 nor did he maintain a permanent place of abode within the State during the year.

CONCLUSIONS OF LAW

A. That 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 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 [Tax Law §605(a)(1); 20 NYCRR 102.2(b) (which was in effect during the year in issue)].

B. That petitioner, a New York domiciliary, has satisfied two of the three requirements necessary for nonresident status (see Finding of Fact "7", supra). Also, there is no dispute that petitioner resided outside of New York

State during all of 1971. Therefore, the determination of the issue in this case rests on whether the dwelling places occupied by petitioner during 1971 were permanent abodes.

In an Opinion of Attorney General dated March 28, 1940, it was stated that:

"If one were to give the fullest effect to the word 'permanent' then a person maintaining a 'permanent place of abode' in New York should be considered as a domiciliary. But careful study of the language of Article 16, section 350(7) (superceded by, and essentially identical to Article 22, section 605(a)(1) of the Tax Law) compels the conclusion that the Legislature did not intend that the word 'permanent' should be construed as meaning the ultimate in the way of a residence established for all time to come. Obviously it intended rather an abiding place, established either by a domiciliary or a nondomiciliary, having a fixed or established character as distinguished from intermittent or transitory."

Another factor to be considered is whether the place of abode was maintained over a significant period of time to create a well-settled physical connection to a particular geographical area.


C. That the number of residences occupied by petitioner in 1971 and the pattern of his movements during said year indicate that he did not settle into a permanent place of abode until the latter part of 1971. The evidence in the instant case, when considered collectively, leads to the conclusion that petitioner's dwelling places during the first seven months of 1971 were not of a fixed character and were not maintained over a sufficient period of time to create a well settled physical connection to the geographical areas. Rather, such abodes were transitory in nature and therefore cannot be considered permanent. Since petitioner did not maintain a permanent place of abode outside of New York during the entire year in issue, he is taxable as a New York State resident during 1971.


D. That the petition of William R. Revett is denied and the Notice of Disallowance dated December 23, 1974 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER