

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard W. Hatton :

: 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 1979. :

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 10th day of July, 1985, he served the within notice of decision by certified mail upon Richard W. Hatton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard W. Hatton
8460 S.W. 156 Place Unit 725
Miami, FL 33193

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
10th day of July, 1985.

David Parchuck

Annice A. Hargrave

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard W. Hatton :

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 1979. :

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 10th day of July, 1985, he served the within notice of decision by certified mail upon Dorothy Hatton, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dorothy Hatton
Box 93
Cairo, NY 12413

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
10th day of July, 1985.

David Parchuck

Quinn O'Donnell

Authorized to administer oaths
pursuant to Tax Law section 174

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

July 10, 1985

Richard W. Hatton
8460 S.W. 156 Place Unit 725
Miami, FL 33193

Dear Mr. Hatton:

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
Dorothy Hatton
Box 93
Cairo, NY 12413
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD W. HATTON	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

Petitioner, Richard W. Hatton, 8460 S.W. 156 Place, Miami, Florida 33193, 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 1979 (File No. 33979).

A small claims hearing was held before Thomas E. Drake, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Building #9, Albany, New York, on June 25, 1984 at 10:00 A.M. Petitioner appeared by Dorothy Hatton. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner changed his domicile from New York State to Florida on June 14, 1979.

FINDINGS OF FACT

1. Petitioner, Richard W. Hatton, timely filed a New York State Income Tax Resident Return for the period January 1, 1979 through May 31, 1979. In a statement attached to the return, he explained that he changed his residence to the State of Florida, the state in which his Coast Guard duty station was located. Said return showed that petitioner's income during his resident period was comprised of wages from the Coast Guard of \$1,661.40 and interest income of \$31.72. Total income from all sources amounted to \$7,473.88. The

return also showed income tax withheld of \$32.40 and a refund claimed in the amount of \$25.98.

2. On March 5, 1981, the Audit Division issued a Notice of Deficiency to petitioner asserting additional tax due for 1979 in the amount of \$87.56¹, plus interest. A Statement of Audit Changes issued to petitioner on September 2, 1980 provided the following explanation of the asserted deficiency:

"If, at the time he entered Military Service, the domicile (legal address) of the serviceman was in New York State, assignment to duty outside the State does not change his New York domicile. He must file his return and pay any tax due in the same manner as any resident individual unless he satisfies all three of the following conditions:

1. He had no permanent place of abode in New York State during the taxable year,
2. He did maintain a permanent place of abode outside New York State during the entire taxable year, and
3. He did not spend more than 30 days in New York State during the taxable year.

Since you did not maintain a permanent place of abode outside New York State for the entire taxable year and you spent more than 30 days in New York State during the taxable year, you do not meet the above three conditions. Therefore, you have been considered a resident of New York State for the entire taxable year."

3. Prior to June 30, 1975, petitioner, a New York domiciliary, resided with his parents in Cairo, New York. On June 30, 1975, after graduation from high school, petitioner entered the United States Coast Guard Academy, located in New London, Connecticut. While attending the Academy, petitioner spent most of his free time on weekends and during the summer months in Connecticut. He returned to New York State only infrequently. During the year in issue, he spent a total of eight days in New York State.

¹ The refund claimed in petitioner's return was not issued. The Audit Division applied the tax withheld against the recomputed tax resulting in the net additional tax due of \$87.56.

4. Petitioner apparently resided in a dormitory provided by the Coast Guard while attending the Academy.

5. In February of 1979, the members of the Academy's graduation class, in order of class standing, were allowed to indicate their preference for duty station assignments. Petitioner's choice was duty aboard the USCGC Courageous, which was located in Port Canaveral, Florida. On April 30, 1979, petitioner received orders from the Coast Guard indicating a permanent change of duty station to Port Canaveral, Florida upon his graduation from the Academy.

6. On April 20, 1979, petitioner, anticipating his assignment to Florida, executed Coast Guard form DD2058(CG), State of Legal Residence Certificate, thereby certifying his legal residence/domicile to be Cape Canaveral, Florida.² Said form was used by the Coast Guard in determining the state of legal residence of petitioner for the purpose of withholding state income tax from his military pay.

7. On May 23, 1979, petitioner graduated from the Academy and was commissioned an Ensign in the United States Coast Guard. On June 9, 1979, petitioner was married in New London, Connecticut. Petitioner's wife, a resident of Connecticut at the time of their marriage³, accompanied him to his new duty station. They arrived in Florida on June 14, 1979. Petitioner and his wife resided in an apartment they rented in Titusville, Florida. From June 14, 1979 to the date of the hearing held herein, petitioner has continued to reside in

² The record does not disclose why petitioner's orders show Port Canaveral and the certificate shows Cape Canaveral.

³ Petitioner, in a letter dated April 8, 1980 and attached to his New York income tax return, indicated that his wife still maintains her residence in Connecticut.

Florida, although at some point after the year in issue, he was ordered to duty in Miami, Florida. Petitioner remained in the Coast Guard during this entire period.

8. Petitioner registered to vote in Florida, changed his automobile registration to Florida, obtained a Florida driver's license, and opened bank accounts in Florida.

CONCLUSIONS OF LAW

A. That petitioner, Richard W. Hatton, has sustained his burden of proof imposed by section 689(e) of the Tax Law in establishing that he changed his domicile from New York to Florida on June 14, 1979.

B. That since petitioner, Richard W. Hatton, was not domiciled in New York State after June 14, 1979, did not maintain a permanent place of abode in New York State during said year, and spent less than 183 days in New York State during said year, he was a nonresident individual after said date in accordance with the meaning and intent of sections 605(a)(2) and 605(b) of the Tax Law.

C. That the petition of Richard W. Hatton is granted, the Notice of Deficiency issued March 5, 1981 is cancelled, and the Audit Division is directed to grant petitioner a refund in the sum of \$25.98 together with such interest as may be lawfully due.

DATED: Albany, New York


STATE TAX COMMISSION

JUL 10 1985



PRESIDENT

COMMISSIONER



COMMISSIONER

*Admitted to
Practice R/Kong*