

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

William A. & Leslie H. Good : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article(s) 22 of the Tax Law for the :  
Years 1979, 1980 & 1981. :  
\_\_\_\_\_

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of January, 1987, he/she served the within notice of Decision by certified mail upon William A. & Leslie H. Good the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William A. & Leslie H. Good  
1414 E. Sycamore Avenue  
El Segundo, CA 90245

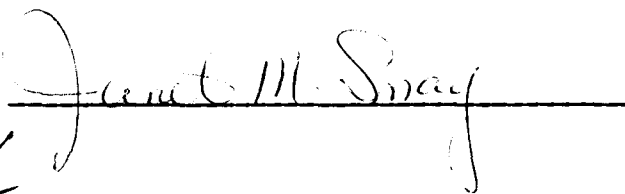
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
9th day of January, 1987.

  
\_\_\_\_\_

Authorized to administer oaths  
pursuant to Tax Law section 174

  
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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

William A. & Leslie H. Good :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
Tax under Article(s) 22 of the Tax Law for the :  
Years 1979, 1980 & 1981.  
\_\_\_\_\_ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of January, 1987, he served the within notice of Decision by certified mail upon Seymour Freilich, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Freilich  
Biller & Snyder  
75 Maiden Lane  
New York, NY 10038

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  
9th day of January, 1987.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

January 9, 1987

William A. & Leslie H. Good  
1414 E. Sycamore Avenue  
El Segundo, CA 90245

Dear Mr. & Mrs. Good:

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Seymour Freilich  
Biller & Snyder  
75 Maiden Lane  
New York, NY 10038

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WILLIAM A. GOOD AND LESLIE H. GOOD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1979, 1980 and	:	
1981.	:	

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Petitioners, William A. Good and Leslie H. Good, 1414 East Sycamore Avenue, El Segundo, California 90245, 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 1979, 1980 and 1981 (File No. 56567).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1986 at 9:15 A.M., with all briefs filed by September 29, 1986. Petitioners appeared by Biller & Snyder (Lawrence Litowitz, C.P.A. and Seymour Freilich, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner, William A. Good, was a New York resident for tax years 1979, 1980 and 1981, and therefore liable for additional personal income tax.

#### FINDINGS OF FACT

1. On July 27, 1984, the Audit Division issued notices of deficiency to petitioners, William A. Good and Leslie H. Good, asserting liability for additional personal income tax for the years 1979, 1980 and 1981 in the sum of \$10,038.73, plus penalty of \$4,211.03 and interest of \$3,926.76. A Statement

of Audit Changes was sent to petitioners under separate cover on March 26, 1984, which explained the deficiency, in part, by stating:

"All income received by a resident whether from sources within or without the State, is taxable to New York.

\* \* \*

"Penalty for late filing, at 5% per month with a maximum of 22½%, and penalty for late payment, at ½% per month with a maximum of 25%, have been applied (Sections 685(a)(1) and (a)(2) of the New York State Tax Law)."

2. During the period in issue, petitioner William A. Good was employed as a pilot by Braniff International, Inc. ("Braniff") whose flights originated and terminated primarily at the New York area airports of LaGuardia, Kennedy and Newark.

3. During the years in issue, petitioner Leslie H. Good was employed by Trans World Airlines ("TWA") in a supervisory capacity, stationed at Kennedy Airport in New York.

4. It is petitioners' contention that they were a two-household family, maintaining permanent places of abode in the States of Texas and New York, petitioner Leslie H. Good residing in New York and petitioner William A. Good residing in the State of Texas.

5. Petitioner William A. Good purchased an eight-unit apartment building at 7606 Eastern Avenue in Dallas, Texas on or about October 25, 1976, and consistently claimed this address to be his domicile during the period in issue.

6. It was necessary for petitioner Leslie H. Good to reside in New York since her job with TWA required her presence at Kennedy Airport a minimum of five days per week beginning in March of 1976.

7. Due to Mrs. Good's job in New York, petitioners purchased a home at 2637 Terrell Avenue in Oceanside, New York in May of 1976, which served as petitioner Leslie H. Good's domicile and residence until late 1982.

8. Petitioner William A. Good's name appears on the title for said house in Oceanside, New York and it was solely his credit rating which was determinative in acquiring a mortgage on said property.

9. Indicia of petitioner William A. Good's domicile in the State of Texas included his Texas voter registration application dated September 23, 1976, Texas driver's license, various Texas motor vehicle registrations, and the fact that he executed wills in 1976, 1978 and 1980 in which he declared that he was a resident of Dallas County, Texas.

10. Petitioner Leslie H. Good did not timely file a New York State income tax resident return or timely remit payment for the tax year 1980. Petitioner William A. Good filed only a New York State income tax nonresident return for the tax year 1979, untimely and without remittance. Petitioners filed joint Federal returns in each of the years in issue and Mrs. Good filed New York State resident income tax returns for 1979 and 1981.

11. Petitioners contend that Mr. Good spent only brief periods in the State of New York and, whenever possible, flew back to Dallas between flight assignments to perform a host of other duties for Braniff, including acting as manager of operations analysis, Concorde project engineer, member of the American Institute of Aeronautics and Aeronautics Technical Committee on Aircraft Operations; activities in the Airline Pilots Association; and Check Engineer and Flight Standards Check Engineer on the B727 aircraft.

12. Petitioners had one child during the period in issue, in 1980.

Mrs. Good and the child resided at the family's address in Oceanside, New York until September, 1982.

13. Petitioners contend that those sections of the Federal Aviation Act of 1958, as amended, which prohibit state income taxation of compensation paid to interstate air carrier employees applied to petitioner William A. Good's circumstances during the years in issue.

#### CONCLUSIONS OF LAW

A. That Tax Law § 689(e) provides that, in any case before the Tax Commission, the burden of proof is upon the petitioner except in specifically enumerated circumstances which are not present herein.

B. That Tax Law § 605(a) defines a resident individual as one:

"(1) who is domiciled in this state, unless (A) 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,... or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States."

C. That the evidence adduced at hearing clearly demonstrates that petitioner William A. Good was domiciled in the State of Texas during the years 1979, 1980 and 1981, but that said petitioner also maintained a permanent place of abode in the State of New York and spent in the aggregate more than 183 days of the taxable years in the State of New York.

D. That the income tax regulations at 20 NYCRR 102.2(c) provide,:

"Any person domiciled outside New York State who maintains a permanent place of abode within New York State during any taxable year, and claims to be a nonresident, must keep and have available for examination by the Tax Commission adequate records to substantiate the fact

that he did not spend more than 183 of such taxable year within New York State."

E. That the documentation, including but not limited to flight logs, expense receipts, payroll records, and correspondence, submitted by petitioners was neither sufficient nor credible for the purpose of substantiating that petitioner William A. Good did not spend more than 183 days for each of the taxable years in question within New York State.

F. That the petitioners' argument with regard to the alleged controlling section of the Federal Aviation Act of 1958, as amended, concerning state income taxation of compensation paid to interstate air carrier employees (49 USC § 1512) falls of its own weight since said section prohibits the state income taxation on compensation paid to interstate air carrier employees in any state other than the state of such employee's residence. The prohibition of 49 USC § 1512 is inapplicable since petitioner William A. Good's residence is hereby determined to be the State of New York for the period in issue.

G. That petitioners have failed to show that the untimely filing of the 1979 nonresident return of Mr. Good and the 1980 resident income tax return of Mrs. Good and the untimely payment of taxes shown on the returns were due to reasonable cause. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are sustained.





H. That the petition of William A. Good and Leslie H. Good is denied and the notices of deficiency dated July 27, 1984 are hereby sustained, together with the stated penalty and such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER