

STATE OF NEW YORK  
STATE TAX COMMISSION

*Lavigne*  
P.I - 1970

In the Matter of the Petition

of

Richard W. Lavigne &  
Marguerite Lavigne  
For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1965

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

*deposited  
CCH #  
99-322*

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Richard W. Lavigne & Marguerite Lavigne (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Francis C. LaVigne, Esq.  
3 Church Street  
Massena, New York 13662

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

29th day of December, 1970.

*Joseph S. VanLatten*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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Marguerite Lavigne

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608 Lawrence Drive  
Haughton, Louisiana 71037

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Sworn to before me this

29th day of December, 1970





STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

RICHARD W. LAVIGNE AND :  
MARGUERITE LAVIGNE :

DECISION

For Redetermination of Deficiency or :  
For Refund of Personal Income Tax :  
Under Article 22 of the Tax Law :  
for the Year 1965 :

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Petitioners, Richard W. LaVigne and Marguerite LaVigne, have filed a petition for redetermination of deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the year 1965. (File #49232350). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on September 10, 1970 at 1:00 P.M. Petitioners appeared by LaVigne & Nicandri, Esqs. (Francis C. LaVigne, Esq. of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners, Richard W. LaVigne and Marguerite D. LaVigne filed a New York State Income Tax Resident Return for the year 1965.

2. On February 16, 1968 Petitioners, Richard W. LaVigne and Marguerite D. LaVigne, filed a claim for refund of Personal Income Tax for the year 1965 in the sum of \$145.37 upon the grounds that they were non-residents during the year 1965.

3. On June 24, 1968 the Income Tax Bureau issued a Notice of Disallowance of petitioners, Richard W. LaVigne and Marguerite D. LaVigne's claim for refund.

4. Petitioners, Richard W. LaVigne and Marguerite D. LaVigne, conceded that they were domiciled in New York State during the year 1965.

5. Petitioners, Richard W. LaVigne and Marguerite D. LaVigne, did not maintain a permanent place of abode in New York State during the year 1965.

6. Petitioners, Richard W. LaVigne and Marguerite D. LaVigne, spent less than thirty days in New York State during the year 1965.

7. Petitioner, Richard W. LaVigne has been a volunteer career officer in the United States Air Force since 1959. During the year 1965 he was stationed at Kincheloe Air Force Base in Michigan. He was assigned a one family house on the base by the Air Force where he lived with his wife and four children. His school age children attended a school on the base run by the Air Force. He was not allowed by the Air Force to live off the base, first, because there was no off base housing available and second, because as a Strategic Air Command officer he was on "ALERT" status and had to remain within the base confines. He did his personal banking in Michigan. He intended to stay in the Air Force for twenty years and then retire. He had no definite intentions as to where he would live upon retirement.

#### CONCLUSIONS OF LAW

A. That since the living quarters provided for Petitioners, Richard W. LaVigne and Marguerite D. LaVigne, by the United States Air Force during the year 1965 were located on a military base, said living quarters did not constitute a permanent place of abode.

B. That since petitioners, Richard W. LaVigne and Marguerite D. LaVigne during the year 1965 were domiciled in New York State and did not maintain a permanent place of abode elsewhere, they were residents of New York State in accordance with the meaning and intent of Section 605 (a) (1) of the Tax Law.

C. That the petition of Richard W. LaVigne and Marguerite D. LaVigne is denied and the Notice of Disallowance of their claim for refund issued June 24, 1968 is sustained.

DATED: ALBANY, NEW YORK

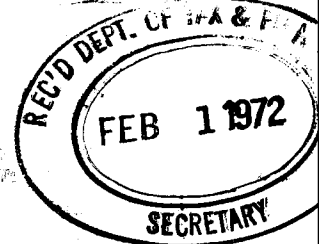
*December 23, 1970*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Mauley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Krenn*  
\_\_\_\_\_  
COMMISSIONER

BUREAU OF LAW  
MEMORANDUM

TO

FROM :

**Commissioners Gallman, Manley and Koerner**

SUBJECT:

**Saul Hackelman, Director****Richard W. LaVigne vs. State Tax Commission  
George B. Schold, Jr. vs. State Tax Commission  
January 20, 1972 opinions of the Supreme Court -  
Appellate Division, Third Judicial Department**

Attached are copies of the Appellate Division decisions in the above cases, both involving whether servicemen domiciled in New York State but living on a military base outside the State are able to maintain a permanent place of abode elsewhere within the meaning of Section 605 (a)(1) of the Tax Law.

While the court annulled the Tax Commission determinations, it should be noted that the two proceedings have been remitted to the Commission to "determine whether other factors do or do not establish that petitioners had a permanent place of abode outside the State".

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**Director****JS:lk****Enc.****January 31, 1972****cc: John Donovan, Director  
Edward Rock, Esq.**

*Mr. Rosen*

January 20, 1972.

17847

In the Matter of RICHARD W. LA VIGNE et al.,  
Petitioners,

v.

STATE TAX COMMISSION, Respondent.

Proceeding under CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission which held petitioners taxable as residents of New York.

The issue raised in this proceeding is whether a serviceman domiciled in New York but living on a military base outside the State is able to "maintain a permanent place of abode elsewhere" within the meaning of subdivision (a) (1) of section 605.

The State Tax Commission determined that a serviceman domiciled in New York but living on a military base outside the State is unable to maintain a permanent place of abode elsewhere.

We hold that the determination of a permanent place of abode outside the State should not depend merely upon whether petitioners lived on or off the military base. Accordingly, the proceeding should be remitted to the State Tax Commission to determine whether other factors do or do not establish that petitioners had a permanent place of abode outside the State.

Determination annulled, with costs, and matter remitted for further proceedings.

HERLIHY, P.J., GREENBLOTT, COOKE, SWEENEY and SIMONS, JJ., concur.

RECEIVED  
DEPARTMENT OF  
TAXATION AND FINANCE  
JAN 24 1972  
LAW BUREAU

Third Judicial Department

*For Memo*

18039

January 20, 1972.

In the Matter of GEORGE B. SCHOLD, JR., et al.,  
Petitioners,

v.

STATE TAX COMMISSION, Respondent.

Determination annulled, with costs, and matter remitted for further proceedings. (See Matter of La Vigne v. State Tax Comm., \_\_\_ A D 2d \_\_\_ [decided herewith].)

HERLIHY, P.J., GREENBLOTT, COOKE, SWEENEY and SIMONS, JJ., concur.

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TAXATION AND FINANCE.

JAN 24 1972

LAW BUREAU