

STATE OF NEW YORK
STATE TAX COMMISSION

McCarthy
P.I - 1970

In the Matter of the Petition

of

Albert A. McCarthy

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1957

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

State of New York
County of Albany

Janet Wright

, 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 9th day of July , 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Albert A.

McCarthy

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Albert A. McCarthy
c/o David S. Galton, Esq.
21 East 40th Street
New York, New York 10016

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

9th day of July , 1970

Marie Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALBERT A. McCARTY	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law for the year 1957	:	

Taxpayer filed an application for revision or refund of personal income taxes pursuant to Tax Law Section 374. The taxes were imposed by Article 16 of the Tax Law for the period January 1, 1957 to June 30, 1957. Such application was denied, and a hearing thereon was duly demanded and scheduled. The hearing was held before Alfred Rubinstein, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 27, 1967. Taxpayer appeared and testified and was represented by David A. Galton, Esq. The record of that hearing having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. Taxpayer filed an Income Tax Non-Resident Return for the period January 1, 1957 to June 30, 1957. Taxpayer also filed a resident return for the period July 1, 1957 to December 31, 1957. Assessment #B-846780 was issued in the amount of \$1730.21 for the tax year 1957, holding taxpayer a resident domiciled in this State.

2. Taxpayer, Albert A. McCarty, resided in New York City from 1937 to February 1956 during which period he was employed by the Cavendish Company, a New York firm. In February 1956, while leasing an apartment at the Hotel Mayflower in Manhattan, taxpayer left the State and went to Montreal, Quebec, Canada, to work on certain set-ups for Ogilvy's, a Canadian firm. Taxpayer had no right to sublease his apartment at the Mayflower under the terms of the lease and because of the frozen rent situation at the time.

3. Taxpayer's original intent was to remain in Canada in the employ of Ogilvy's for a period of three months. Upon leaving New York, taxpayer was accompanied by his wife and his sister-in-law. They took only personal articles of clothing with them and subleased a furnished apartment in Montreal. Taxpayer continued in the employ of Ogilvy's without entering into an employment contract through June 30, 1957.

4. In 1956 taxpayer made two or three business trips to New York City on behalf of his employer amounting to approximately fifteen days. On these trips the taxpayer stayed at his Hotel Mayflower apartment. Three or four similar trips totalling eighteen days were made in the first six months of 1957. Again taxpayer stayed at his Mayflower apartment. Taxpayer returned to New York in July of 1957.

5. Taxpayer claims two additional exemptions, one for himself and one for his wife, based on the fact that each was at least 65 years of age in the taxable year.

6. A claim for a full medical expense deduction totalling \$2164.39 for the taxable year has been filed by the taxpayer.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DETERMINES:

A. Taxpayer has failed to sustain his burden of proof that he entered Canada with the intention of residing there permanently. Furthermore, during the taxable year taxpayer spent more than 30 days in the State of New York, and also maintained a permanent place of abode in the State. Since no change of domicile did take place, the taxpayer is considered a resident and domiciliary of New York for the entire taxable year.

B. No additional exemption is allowed for being over 65 years of age. Any additional exemption so granted must be reduced by the amount of gross income reported in excess of \$6000.00. As the gross

income is in excess of \$6800.00, no additional exemption is allowed.


C. The taxpayer has failed to sustain his burden of proof regarding the medical expense, and such claim is disallowed.

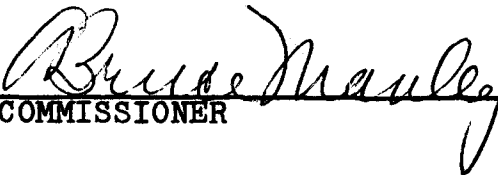
D. The assessment is correct and is sustained, and the application for revision is denied.

DATED: Albany, New York

STATE TAX COMMISSION

July 7, 1970


COMMISSIONER


COMMISSIONER


COMMISSIONER