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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS J. & ELECTA B. O'TOOLE

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) 1969.

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

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 7th day of February, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon THOMAS J. &  
ELECTA B. O'TOOLE (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

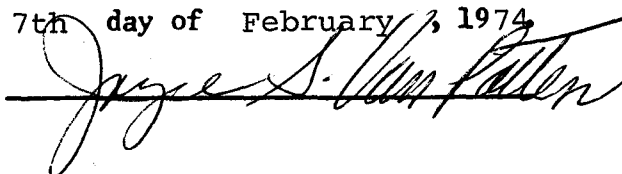

Mr. and Mrs. Thomas J. O'Toole  
65 Roman Oval  
New Rochelle, New York 10805

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

7th day of February, 1974.



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~FOR KAREN K. KUCYMAK, PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

February 7, 1974

Mr. and Mrs. Thomas J. O'Toole  
65 Roman Oval  
New Rochelle, New York 10805

Dear Mr. and Mrs. O'Toole:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**L. Robert Leisner**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
THOMAS J. & ELECTA B. O'TOOLE : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Year 1969. :

Petitioners, Thomas J. and Electa B. O'Toole, petitioned for a redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1969.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 15, 1972, before L. Robert Leisner, Hearing Officer. The taxpayers appeared pro se. The Income Tax Bureau was represented by Saul Heckelman, Esq., (James Scott, Esq., of Counsel).

## ISSUE

Were the petitioners residents of New York State for income tax purposes for the entire year 1969, or were they domiciliaries of Puerto Rico from January through May 1969?

## FINDINGS OF FACT

1. Petitioners, Thomas J. and Electa B. O'Toole, timely filed New York State income tax returns for the year 1969.
2. A Notice of Determination of deficiencies in personal income tax for the year 1969 was issued on August 30, 1971, against the taxpayers under File No. 49111001. The Income Tax Bureau contended the petitioners were liable for New York State resident income tax for the entire year of 1969.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. The taxpayers asserted that they were domiciliaries of Puerto Rico from April 1, 1965 through May 31, 1969. Taxpayers allocated income based upon this.

5. In 1965, Thomas J. O'Toole was permanently transferred by his employer, the F.B.I., to Puerto Rico. Petitioners rented out their New York house.

6. Petitioners rented an apartment in Puerto Rico under a lease with a renewal clause. The lease was renewed.

7. Petitioners voted in 1965, 1966, 1967, and 1968 in Puerto Rico and not in New York. Petitioners paid New York income tax from January 1, 1965 to March 31, 1965, when he moved to Puerto Rico. Petitioners paid Puerto Rican income tax from April 1, 1965 until May 31, 1969, when petitioners returned to New York because of trouble with the lessees of their New York house.

8. Petitioners attended the University of Puerto Rico in a graduate program open only to domiciliaries.

9. Petitioners obtained Puerto Rican drivers licenses and let their New York licenses lapse. They ended their membership in a New York church and joined a church in Puerto Rico. They terminated their membership in New York clubs.

10. Electa B. O'Toole taught at a Puerto Rican college and worked with the Girl Scouts in Puerto Rico.

11. Petitioner, Thomas J. O'Toole, was admitted to practice law before the U.S. District Court in Puerto Rico after a district court judge ruled on the merits, that he was in fact domiciled in Puerto Rico.

12. When petitioners moved to New York in June 1969, Thomas J. O'Toole was denied a notary public commission as he was considered not a resident for the preceding year.

13. Petitioner, Thomas J. O'Toole, was issued a passport in 1967, listing Puerto Rico as his residence.

14. Public Law 814 of the 81st Congress (Revenue Act of 1950) declares that Puerto Rico is considered as a state for Internal Revenue purposes.

CONCLUSIONS OF LAW

A. Petitioners changed their domicile to Puerto Rico on April 1, 1965, and remained Puerto Rican domiciliaries until June 1, 1969, when they abandoned their Puerto Rican domicile and returned to New York.

B. Pursuant to 20 NYCRR 102.2(d)(3), a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. Puerto Rico is considered a state for income tax purposes, so the taxpayers return to New York in 1969 does not negate his intent to change his domicile to Puerto Rico in 1965.


C. The petition is sustained pursuant to Tax Law section 654 and 605. It is determined that there are no deficiencies against petitioners in income tax for the year 1969.

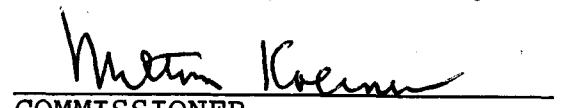
D. Pursuant to the Tax Law, interest shall be added to the refund until the date of payment.

DATED: Albany, New York  
February 7, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER