

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM C. and JEANNETTE N. MC GEE

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

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) 1970.

State of New York
County of Albany

JANET MACK, 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 18th day of December, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon William C. and
Jeannette N. McGee ~~(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. William C. McGee
1565 South Pinebark Lane
Charleston, South Carolina 29401
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

18th day of December, 1975.

Mary Cross

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3850

457-3850

DATED: Albany, New York
December 18, 1975

Mr. and Mrs. William C. McGee
1565 South Pinebark Lane
Charleston, South Carolina 29401

Dear Mr. and Mrs. McGee:

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

Please take further notice that pursuant to
Section ~~690~~ **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: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM C. and JEANNETTE N. MC GEE :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1970. :
:

Petitioners, William C. and Jeannette N. McGee, 1565 South Pinebark Lane, Charleston, South Carolina 29401, petitioned for a redetermination of deficiency in personal income taxes under Article 22 of the Tax Law for the year 1970.

The case was submitted for decision on information contained in the file.

ISSUE

The issue in this case is whether petitioners qualified as nonresidents under Tax Law, sec. 605, Reg. sec. 102.2(b), by maintaining a permanent place of abode outside New York State for the full taxable year in question.

FINDINGS OF FACT

1. Petitioners, William C. and Jeannette N. McGee, timely filed a New York State income tax resident return for the year 1970.

2. A Notice of Determination of deficiencies in personal income tax for the year 1970 was issued on July 31, 1972, against the taxpayers under File No. 0-69179768.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioners, William C. and Jeannette N. McGee were domiciliaries of New York State during the year in question. They maintained no permanent place of abode, nor did they spend more than thirty days in New York State during that period of time.

5. Petitioners resided in San Leandro, California, from December 31, 1969 until June 12, 1970. On June 13, 1970, pursuant to permanent change of station, military orders, petitioner, William C. McGee moved from California to Rhode Island. He was ordered to report to Mobile Construction Battalion 40 U.S. Navy. On arrival petitioner purchased a dwelling in East Greenwich, Rhode Island. Immediately thereafter, petitioner was ordered out of the United States with his unit, however, his wife and family were required to remain in the continental United States.

6. Petitioner, Jeannette N. McGee, together with the rest of the McGee family, traveled across country during the period from June 13 to September 4, 1970, arriving in Rhode Island in time for the family's children to begin school. Petitioner,

William C. McGee, rejoined his family in Rhode Island on September 20, 1970.

CONCLUSIONS OF LAW

A. A member of the Armed Forces who was domiciled in New York State at the time he entered such service generally retains his status as a domiciliary of New York State throughout his period of armed service, regardless of whether he may be assigned to duty or how long. Accordingly, a member of the Armed Forces who was domiciled in New York State at the time of entrance into military service continues to be taxed as a New York resident unless during the taxable year he satisfies all of the following three conditions: 1) maintained no permanent place of abode in New York; 2) maintained a permanent place of abode outside New York; and 3) did not spend thirty days or more in New York. Reg. sec. 102.2(b), Tax Law, sec. 605.

B. Petitioners, William C. and Jeannette N. McGee, qualified as nonresidents of New York State for the year in question, under Reg. sec. 102.2(b), Tax Law sec. 605, by maintaining a permanent place of abode outside of New York State for the full taxable year 1970. Matter of Ryan v. Chapman, 273 App. Div. 99, and Matter of LaVigne v. State Tax Commission, 38AD 2d 773.

C. Petitioner, William C. McGee's Rhode Island residency was not changed by the fact that he was absent pursuant to military order. "It would be as ungracious as unreasonable to hold that the citizen who absents himself in obedience to the call of his country, thereby loses the advantages of residence by such an act." People v. Guariglia, 187 Misc. 843, 65 N.Y.S. 2d 96, aff'd 272 AD 784, 69 N.Y.S. 2d 759.

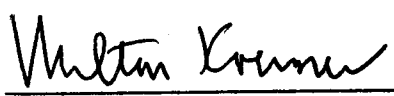
D. The taxpayers' petition is sustained. It is determined that there are no deficiencies against petitioners in income tax.

DATED: Albany, New York
December 18, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER