

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS and MARCELLA ELWARD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (a) 22 of the :
Tax Law for the Year (a) or Period(s) :
1966.

State of New York
County of Albany

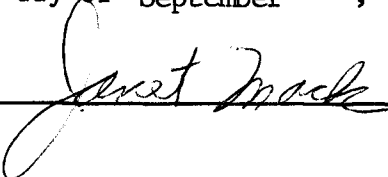
Jean Wager, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Thomas and Marcella
Elward (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Thomas Elward
237 Beach 119th Street
Rockaway Park, N.Y.

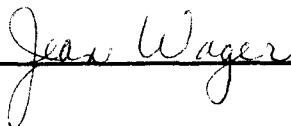
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September, 1976





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS and MARCELLA ELWARD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (x) ~~or Period(s)~~ :
1966.

State of New York
County of Albany

Jean Wager, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon Reavis & McGrath, Lawrence W. Boes, (representative of) the petitioner in the within proceeding, Esq. by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Reavis & McGrath
Lawrence W. Boes, Esq.
One Chase Manhattan Plaza
New York, New York 10005 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 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

29th day of September, 1976

Janet Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 29, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. Thomas Elward
237 Beach 119th Street
Rockaway Park, N.Y.

Dear Mr. and Mrs. Elward:

Please take notice of the **Notice of 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS and MARCELLA ELWARD	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1966.	:	

Thomas and Marcella Elward, residing at 237 Beach 119th Street, Rockaway Park, New York, filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1966. File No. 56734510.

Said deficiency was asserted by notice issued April 26, 1971, and is in the amount of \$406.47 plus interest of \$98.28 for a total of \$504.75.

In lieu of a hearing the facts have been stipulated. Such stipulation has been duly examined and considered.

ISSUE

The issue in this case is whether Mr. Elward was either a domiciliary or a resident of New York State in 1966.

FINDINGS OF FACT

1. Mr. Elward first immigrated from Ireland to the U.S.A., at the age of 23, arriving in New York City on April 9, 1930, on which he made his first residence in a boarding house at 27 Babcock Place, West Orange, New Jersey. From that day until January 24, 1969, he considered his home to be in the State of New Jersey. After a short five-week period of employment in 1930, he began employment in June, 1930, as a warehouseman with Lehigh Transportation Company at 98 Frelinghuysen Avenue, Newark, New Jersey. He later became a driver-helper and in 1933, a driver with Lehigh and remained an employee of Lehigh until January 24, 1969, when he became totally disabled by osteo-arthritis of the hips.

2. The nature of Mr. Elward's employment with Lehigh Transportation Company as a driver of tractor trailers in the metropolitan area made it necessary for him to make his regular home near the Lehigh warehouse in Newark. Therefore, he moved in 1931, to a boardinghouse at 136 Pennsylvania Avenue, Newark, New Jersey, where he remained until his marriage in 1937. His hours of work at Lehigh were extremely long and he usually started work at 7:00 A.M. and often as early as 6:00 or 6:30 A.M. Because of the difficulties of driving and loading and unloading freight in the metropolitan area,

his work usually lasted until 7:00 or 8:00 P.M.; but no earlier than 4:00 P.M., and often until 11:00 or 12:00 P.M. Therefore, in order to have as much sleeping and leisure time as possible, he had to make his home close to the Lehigh warehouse.

3. When Mr. Elward got married in 1937, his wife and he made their first home in a rented apartment on Hudson Boulevard, Jersey City, New Jersey, which was 15 minutes away from the Lehigh warehouse where he worked. After one year they moved to an apartment on Belmont Avenue in Newark and subsequently to other apartments in Newark, New Jersey, from 1937 to 1941. In 1941, they bought a two-family house at 287 Johnson Avenue, Newark, New Jersey.

4. In 1946, because the house in Newark was burglarized three times and because of Mr. Elward's continued long hours of work, Mrs. Elward felt unsafe in Newark and she returned to her family home in Ireland with their three small children. Mr. Elward continued to live and work in Newark, New Jersey, from 1946 to 1951, without his wife and children. There were few opportunities for employment in Ireland. Mr. Elward made two visits to his family in Ireland during this period. Therefore, although Mr. and Mrs. Elward were never separated in any legal sense, it was not unusual that they made their homes in different places.

5. In 19⁵¹, Mr. Elward prevailed on his wife to return to the United States with the three children. Although he was forced by the circumstances of his work to live in or near Newark, New Jersey, his wife insisted that she and the children would not live in Newark. They could not find an apartment convenient to Mr. Elward's place of work near Newark where small children were accepted. During the two months of search for an apartment, Mrs. Elward rented an apartment in Rockaway Park, New York, where she lived with the children and her sister.

6. In 1950, during the period while Mrs. Elward and the children were in Ireland, Mr. Elward sold the house at 287 Johnson Avenue, Newark, New Jersey, and began to live with his married sister, Mrs. Charles Kennedy, at 764 Westfield Avenue, Elizabeth, New Jersey. This was and continued to be his home until January, 1969, primarily because his work for Lehigh Transportation Company made it necessary that he live close to the Lehigh warehouse.

7. During the period that Mr. Elward lived in his sister's home in Elizabeth, New Jersey, from 1952 to 1969, there was no accommodation provided in the sister's home for Mr. Elward's wife and three children.

8. In April, 1952, Mrs. Elward decided to reside in Rockaway Park, New York, where she found a large three-story house for sale. This house was classified as a multiple residence, in which four apartments or units could be rented to summer or year-round residents. Mr. and Mrs. Elward jointly bought the house located at 237 Beach 119th Street, Rockaway Park, New York, and took joint title thereto. Although this has been the home of Mrs. Elward and the children from 1952 to present, it was not Mr. Elward's regular place of residence until January 24, 1969, when he retired from Lehigh at the age of sixty-one.

9. From 1952 to 1969, while Mr. Elward worked for Lehigh, his regular residence was in the home of his sister, Mrs. Charles Kennedy, 764 Westfield Avenue, Elizabeth, New Jersey. From Sunday through Friday night, he spent his sleeping and leisure hours at his sister's house in Elizabeth, New Jersey. From Saturday to late Sunday evening he spent his leisure time at the house of his wife and family in Rockaway Park, New York. Occasionally he would also work on Saturday, in which case he would not leave New Jersey, until Saturday evening and he would return to New Jersey, Sunday night. In some years he spent his vacation periods in New York State and in other years at shore cottages on the New Jersey shore. Thus, during this period from April, 1952 through January, 1969, Mr. Elward spent most of his time in New Jersey, with regular weekly visits to

his wife and family in New York. Although this style of life was inconvenient to his wife and family and himself, it was the best course he felt he could follow consistent with his long hours of work in Newark, New Jersey, and his family's residence in Rockaway Park, New York.

10. For the tax year 1966 and other tax years, the petitioners filed a joint Federal tax return using the Rockaway Park address; Mrs. Elward filed a separate New York State tax return using the same address. Mr. Elward's W-2 form (Withholding Tax Statement) contained his New Jersey address.

11. During the period from 1952 to 1969, Mrs. Elward took care of all household finances with respect to the Rockaway Park house, including the preparation and filing of the joint Federal income tax returns and her separate New York State income tax return which included income from that house. She annually employed an accountant or attorney in the Rockaway area to prepare the income tax returns.

12. When in 1950, Mr. Elward changed his place of residence from Newark to 764 Westfield Avenue, Elizabeth, New Jersey, he reported this change of address to his employer, Lehigh Transportation Company. He has held the sincere opinion that he was until January 24, 1969, a resident of New Jersey. Therefore, because no deductions

were made from his wages by his employer and none of the accountants and lawyers who reviewed the Federal and state withholding forms ever informed him that he owed any New York State income taxes, he was of the sincere belief that he owed no New York State income taxes. It was not significant to him that the joint Federal returns which Mrs. Elward caused to be prepared listed the address of 237 Beach 119th Street, Rockaway Park, New York, whereas his personal residence was 764 Westfield Avenue, Elizabeth, New Jersey.

13. During the period from about 1930 through 1969, Mr. Elward had obtained and had annually renewed an automobile operator's license from the State of New Jersey and not from the State of New York. All of the automobiles which he owned through 1969, were bought and registered in and by the State of New Jersey. During this period all of his business contacts were in the State of New Jersey, except for the joint ownership of a house in the State of New York with his wife.

14. On January 24, 1969, because of a deteriorating condition of osteo-arthritis in his hip joints, which caused a total disability Mr. Elward retired from his employment with Lehigh Transportation Company and gave up his place of residence at 764 Westfield Avenue, Elizabeth, New Jersey. During 1969, his sister, Mrs. Charles Kennedy, sold the house.

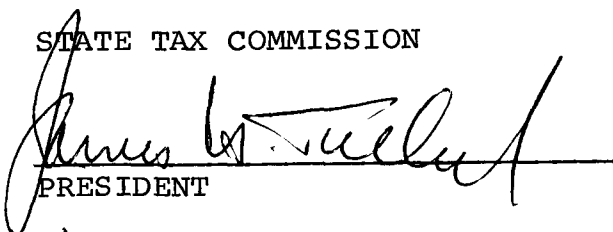
CONCLUSIONS OF LAW

Petitioners have adequately shown that Mr. Elward was not a domiciliary of New York, in 1966. Further, he did not spend more than 183 days in New York, in 1966, and so cannot be considered to be a resident for that year.

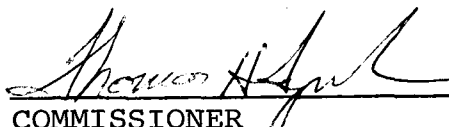
The deficiency is erroneous and is cancelled.

DATED: Albany, New York
September 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER