

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael G. Lynch :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1970 through 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Michael G. Lynch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael G. Lynch

Box 21

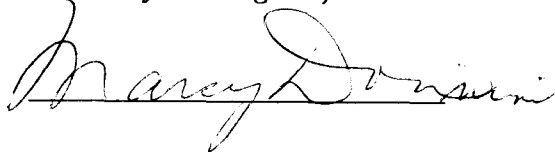
FPO New York, NY 09550

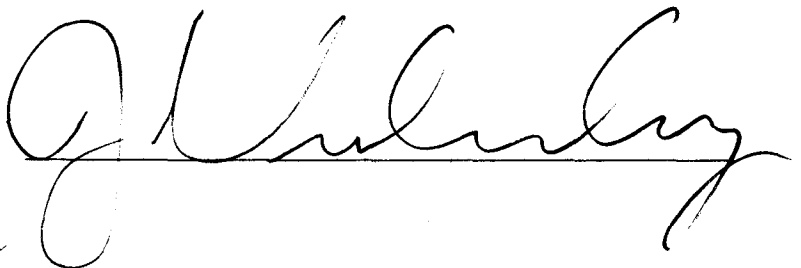
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

31st day of August, 1979.





STATE OF NEW YORK
STATE TAX COMMISSION

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Michael G. Lynch :

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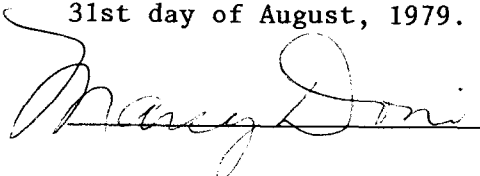
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Nicholas J. Calise the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

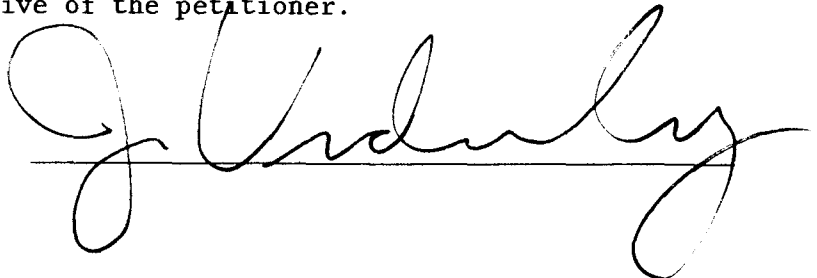
Mr. Nicholas J. Calise
Olvany, Eisner & Donnelly
645 Madison Ave.
New York, NY 10022

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
31st day of August, 1979.


Nancy Doni


Jay Vredenburg



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Michael G. Lynch
Box 21
FPO New York, NY 09550

Dear Mr. Lynch:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Victoria Gary

cc: Petitioner's Representative
Nicholas J. Calise
Olvany, Eisner & Donnelly
645 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL G. LYNCH : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1970, 1971, 1972 and 1973. :
:

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1975 at 1:15 P.M. Petitioner appeared by Nicholas J. Calise, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

Whether petitioner, a career naval officer, was a resident individual within the meaning of section 605(a)(1) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Michael G. Lynch, filed New York State income tax returns for the years 1970 through 1973, but did not pay the amount due on his personal income tax return for 1973. Attached to the 1973 return was a copy of a letter dated January 7, 1974 from John F. Donovan, Director of the Income Tax Bureau, to the office of the Judge Advocate General, and a letter from the petitioner requesting a refund of personal income taxes for 1970, 1971 and 1972 of \$298.94, \$329.47, and \$389.00, respectively, for a total of \$1,017.41.

2. By letter of November 25, 1974, the Income Tax Bureau disallowed the refunds claimed for the years 1970 through 1972. In a February 19, 1975 letter, the Income Tax Bureau advised petitioner that the disallowance for 1971 and 1972 was based on his being in California for continued training and did not, therefore, maintain a permanent place of abode outside New York.

3. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1973 and 1970 and stated therein that personal income tax of \$478.72 was due for 1973 and that a credit for 1970 of \$298.94 was allowed against it. The net amount due, plus interest of \$36.61, resulted in a deficiency of \$143.17. Accordingly, on March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1970 and 1973 in that amount.

4. Petitioner did not maintain a permanent place of abode within New York State and spent less than thirty days in New York for the years in issue.

5. It was conceded by petitioner that he was a New York domiciliary for the years at issue.

6. Prior to petitioner's graduation from the University of Rochester in 1962, he resided with his parents in their home in Elmira, New York. Upon graduation from college, he was commissioned as an ensign in the United States Navy. Since then, he has not resided in New York, nor has he been stationed within New York State. Petitioner is a career naval officer.

7. From 1968 through part of 1971, he was an instructor at the U.S. Naval Supply Corp. School in Athens, Georgia. The Income Tax Bureau recognized that the petitioner maintained a permanent place of abode in Georgia with his family in 1970.

8. Petitioner was transferred to the United States Naval Postgraduate School in Monterey, California, in February of 1971 and remained there until March of 1973. The orders petitioner received from the Chief of Naval Personnel to report to Monterey, California, for the postgraduate curriculum did not specify a particular period of time; such an order was no different from his previous order to report to Athens, Georgia, where he was stationed (See Finding of Fact "7").

9. Petitioner resided at the following addresses during the years in issue:

January 1, 1970 - February 10, 1971-	111-C Kenny Road Athens, Georgia
February 25, 1971 - June 30, 1971	- Lighthouse Avenue Pacific Grove, California
July 1, 1971 - March 25, 1973	- 112 Moran Circle Monterey, California
May 1, 1973 - July 20, 1973	- Ivy Lane Petersburg, Virginia
July 20, 1973 - December 31, 1973-	Quarters A, Navy Supply Center, Puget Sound, Manchester, Washington

10. No evidence was adduced regarding petitioner's relation to the communities in which he was stationed or the activities in which he was engaged.

11. From April to July of 1973, petitioner attended the Petroleum Management School at Fort Lee, Virginia, which was a temporary duty assignment while enroute to the Fuel Department, Naval Supply Center, Puget Sound, Manchester, Washington.

CONCLUSIONS OF LAW

A. That section 605(a)(1) of the Tax Law defines a resident individual as one who is domiciled in this State, unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than 30 days of the taxable year in New York.

B. That the Soldiers and Sailors Civil Relief Act (50 USCS § 574) provides that, for purposes of taxation by any state, a person shall

not be deemed to have lost a residence solely by reason of being absent therefrom in compliance with naval orders, or to have acquired a residence in any other state solely by reason of being so absent.

C. That the burden of proof to establish the maintenance of a permanent place of abode elsewhere is on petitioner.

D. That for the years in issue, petitioner did not maintain a permanent place of abode elsewhere for the entire tax year.

E. That the petition of Michael G. Lynch is denied and the Notice of Deficiency issued March 31, 1975 and the disallowance of the refunds claimed by letter of November 25, 1974 are sustained.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO....Paul .Coburn.....

Please associate with file.

MICHAEL G. LYNCH

10/1/79

M-75 (5/76)

From Robert F. Mulligan

TAX APPEALS BUREAU

STATE CAMPUS

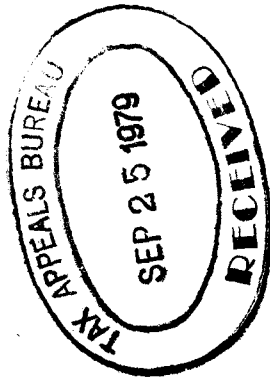
ALBANY, N. Y. 12227

1.

NON-EXL.



Michael G. Lynch
Box 21
FPO New York, NY 09550



Formal

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Victoria Gary

cc: Petitioner's Representative
Nicholas J. Calise
Olvany, Eisner & Donnelly
645 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK
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In the Matter of the Petition :
of :
MICHAEL G. LYNCH : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1970, 1971, 1972 and 1973.

Petitioner, Michael G. Lynch, U.S. Naval Station, Box 21, FPO, New York, New York 09550, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971, 1972 and 1973. (File No. 00514).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1975 at 1:15 P.M. Petitioner appeared by Nicholas J. Calise, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

ISSUE

Whether petitioner, a career naval officer, was a resident individual within the meaning of section 605(a)(1) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Michael G. Lynch, filed New York State income tax returns for the years 1970 through 1973, but did not pay the amount due on his personal income tax return for 1973. Attached to the 1973 return was a copy of a letter dated January 7, 1974 from John F. Donovan, Director of the Income Tax Bureau, to the office of the Judge Advocate General, and a letter from the petitioner requesting a refund of personal income taxes for 1970, 1971 and 1972 of \$298.94, \$329.47, and \$389.00, respectively, for a total of \$1,017.41.

2. By letter of November 25, 1974, the Income Tax Bureau disallowed the refunds claimed for the years 1970 through 1972. In a February 19, 1975 letter, the Income Tax Bureau advised petitioner that the disallowance for 1971 and 1972 was based on his being in California for continued training and did not, therefore, maintain a permanent place of abode outside New York.

3. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1973 and 1970 and stated therein that personal income tax of \$478.72 was due for 1973 and that a credit for 1970 of \$298.94 was allowed against it. The net amount due, plus interest of \$36.61, resulted in a deficiency of \$143.17. Accordingly, on March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1970 and 1973 in that amount.

4. Petitioner did not maintain a permanent place of abode within New York State and spent less than thirty days in New York for the years in issue.

5. It was conceded by petitioner that he was a New York domiciliary for the years at issue.

6. Prior to petitioner's graduation from the University of Rochester in 1962, he resided with his parents in their home in Elmira, New York. Upon graduation from college, he was commissioned as an ensign in the United States Navy. Since then, he has not resided in New York, nor has he been stationed within New York State. Petitioner is a career naval officer.

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CONCLUSIONS OF LAW

A. That section 605(a)(1) of the Tax Law defines a resident individual as one who is domiciled in this State, unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than 30 days of the taxable year in New York.

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not be deemed to have lost a residence solely by reason of being absent therefrom in compliance with naval orders, or to have acquired a residence in any other state solely by reason of being so absent.

C. That the burden of proof to establish the maintenance of a permanent place of abode elsewhere is on petitioner.

D. That for the years in issue, petitioner did not maintain a permanent place of abode elsewhere for the entire tax year.

E. That the petition of Michael G. Lynch is denied and the Notice of Deficiency issued March 31, 1975 and the disallowance of the refunds claimed by letter of November 23, 1974 are sustained.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER