

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

John B. Latham

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 Year 1969. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon John B. Latham, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

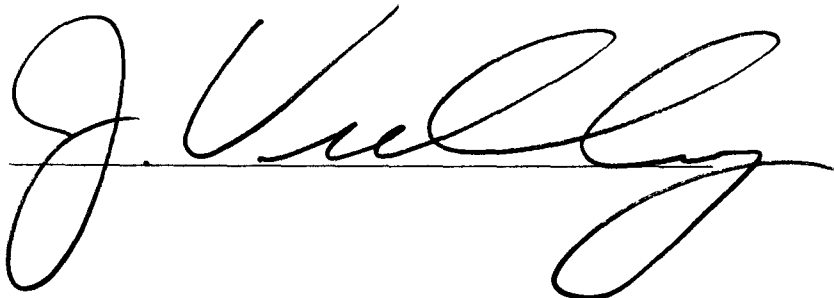
John B. Latham
30 Lincoln Plaza
New York, NY

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
23rd day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

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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 Year 1969.

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Eugene Wenick 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. Eugene Wenick
Ernst, Cane, Berner & Gitlin
7 W. 51st St.
New York, NY 10019

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
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

John B. Latham
30 Lincoln Plaza
New York, NY

Dear Mr. Latham:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Eugene Wenick
Ernst, Cane, Berner & Gitlin
7 W. 51st St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN B. LATHAM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	

Petitioner, John B. Latham, 30 Lincoln Plaza, New York, New York, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969 (File No. 13805).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1979 at 10:45 A.M. Petitioner appeared by Eugene Winick, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner, John B. Latham, changed his domicile from the State of New York to Italy during 1969.

FINDINGS OF FACT

1. Petitioner, John B. Latham, timely filed a New York State Income Tax Resident Return for the year 1969 wherein he listed his period of New York residence as being from January 1, 1969 to April 11, 1969.

2. On October 21, 1971, the Income Tax Bureau issued a Statement of Audit Changes wherein it recomputed petitioner's liability on the basis that he was a full year resident since he failed to reply to an inquiry letter.

Accordingly, a Notice of Deficiency was issued against petitioner on May 22, 1972, asserting additional personal income tax of \$736.88, plus interest of \$92.96, for a total due of \$829.84.

3. The Audit Division submitted a photocopy of the front of a check dated February 5, 1979, payable to the State Tax Commission, in the sum of \$829.84. Said check was signed by petitioner's representative, Eugene Winick, and was for an amount equal to the total due shown on the Notice of Deficiency dated May 22, 1972. Petitioner contended said payment was merely a show of good faith for the specific purpose of securing a fourth and final date for the hearing held herein.

4. Petitioner contended he changed his domicile and residence from the State of New York to Venice, Italy on April 12, 1969. He claimed that when he moved to Italy, his intent was to remain there permanently.

5. Petitioner testified that he moved to Italy for the express purpose of investigating business opportunities once he arrived there. On surrendering his New York apartment, he traveled to Italy by ship and brought all his personal effects with the exception of furniture, which he placed in storage in New York.

6. While in Italy, petitioner lived in two apartments under leases. The duration of the leases was not in evidence.

7. While the petitioner was in Italy, the majority of his time was devoted to trying to establish a discotheque. Although the initial research was completed and legal papers drawn, the business was not established and he returned to New York in the fall of 1970.

8. While in Italy, petitioner had all his mail forwarded to Italy by his New York attorney.

9. Petitioner had no earned income during 1969 and lived on monies received from a trust, which were transferred in monthly increments to his bank account in Italy from the trustee, Morgan Guaranty Trust Company of New York. Although he maintained a checking account in Italy, petitioner continued to maintain a New York account which he contended was used to pay outstanding charge card debts.

10. Petitioner, who had no visa on entering Italy, maintained his United States citizenship and did not apply for citizenship in Italy.

11. During petitioner's 1969 stay in Italy, he returned to New York for approximately three weeks in the fall, and also for an unspecified period of time during the Christmas holiday.

12. Petitioner contended that documentation pertinent to the year at issue, such as his passport, was either lost or destroyed by fire.

13. Petitioner, although born in New York, resided in Connecticut with his family until he attended college in the State of Tennessee. Subsequently in the late 1950's, he attended Columbia University in New York. During the early 1960's, he was engaged in the restaurant and hotel business. During this period, he resided in New York. Although his employment was primarily in New York, he accepted employment during 1964 in Ohio for a six week period, then spent a winter working in the Virgin Islands. When this employment terminated, he returned to New York, setting up residence in a leased apartment.

During 1965 and 1966, petitioner attended Parsons School of Design in New York. Subsequently, he was employed as an interior designer in New York until his departure for Italy in April, 1969.

14. Petitioner, on returning to New York from Italy in the fall of 1970, maintained a residence in New York until approximately 1974, at which

time he moved to Massachusetts. He stayed in said State for about five years until September, 1979, at which time he again returned to New York and resumed his residency here to date.

15. Petitioner testified that he returned to New York whenever he was away because he was born here and his family and friends were all in New York.

CONCLUSIONS OF LAW

A. That 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 [20 NYCRR 102.2(d)(3)].

The fact that the instant case lacks substantial evidence in support of petitioner's claimed intent to remain in Italy on a permanent basis, coupled with the fact that his conduct, in this case the return to New York, contradicts his purported intent, leads to the inference that petitioner did not change his domicile. Furthermore, a historical analysis of petitioner's movements shows the ultimate return to New York at the conclusion of each employment or business endeavor without New York State. As such, petitioner was a domiciliary of the State of New York during the entire taxable year 1969.

B. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in this State [20 NYCRR 102.2(b)].

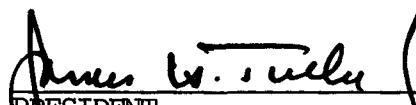
That petitioner has not satisfied the aforementioned requirements; therefore, he was a resident of New York State for the entire taxable year 1969.

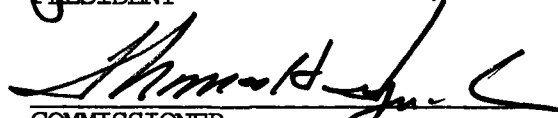
C. That the petition of John B. Latham is denied and the Notice of Deficiency dated May 22, 1972 is sustained, together with such additional interest which is lawfully owing.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER