STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| **ARNOLD A. AND LOTTIE M. ROBBINS** | : | DECISION |
| for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 46, Title T of the Administrative Code of the City of New York for the Year 1979. | : | |

Petitioners Arnold A. and Lottie M. Robbins, 150-11 Grand Central Parkway, Apartment A, Jamaica, New York 11432 filed an exception to the determination of the Administrative Law Judge issued on October 25, 1990 with respect to their petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 805862). Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Andrew Zalewski, Esq., of counsel).

Petitioners did not file a brief on exception. The Division of Taxation filed a letter in lieu of a brief.

After reviewing the entire record in this matter the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether income earned by petitioner Arnold A. Robbins while employed in Illinois during the year 1979 was properly subject to tax by New York State and New York City.

## *FINDINGS OF FACT*

We find the facts as determined by the Administrative Law Judge and make additional findings of fact. The Administrative Law Judge's findings of fact and the additional findings of fact are set forth below.

On June 12, 1987, the Division of Taxation issued to petitioners, Arnold A. and Lottie M. Robbins, a Notice of Deficiency asserting personal income tax due for the year 1979 in the amount of $5,558.32, plus penalty and interest. A Statement of Audit Changes previously issued to petitioners on June 5, 1986 indicates that the tax assessed consisted of $4,219.92 inNew York State tax and $1,338.40 in New York City tax, and that the penalties were imposed pursuant to Tax Law § 685(a)(1), (2) and (c) (failure to timely file a return, failure to timely pay tax due and failure to pay estimated income tax). These documents further reveal the asserted deficiency to be premised upon the position that petitioners were properly taxable as residents of New York State and New York City for the year 1979.

At a Bureau of Conciliation and Mediation Services conference held on February 25, 1988, it was determined that petitioner Lottie M. Robbins had filed a personal income tax return for the year 1979 and paid the applicable tax due thereon. As a result of the conference, the Division of Taxation revised the amount of tax due from petitioner Lottie M. Robbins to zero and the amount of tax due from petitioner Arnold A. Robbins to $1,423.57, consisting of $1,378.76 in New York State tax, $477.81 in New York City tax and a credit of $433.00 for taxes paid to the State of Illinois, plus penalty and interest.[1]

Petitioner began living at his current address in 1947, at which time he was employed by the federal government. In 1951, he left the employ of the federal government to operate his own business. Sometime in 1956, he returned to work with the federal government, resuming his employment as a civilian with the United States Air Force. From 1956 through 1970, petitioner

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[1]As the amount assessed to Lottie M. Robbins has been reduced to zero, the term "petitioner," when used in the remainder of this decision, will denote Arnold A. Robbins, except as otherwise indicated.

was assigned to the Air Force base in Rome, New York. In 1970, he was assigned to the Air Force base in Grandview, Missouri and in 1976 was assigned to the Accounting and Finance Office at Scott Air Force Base in Illinois. Petitioner remained employed at this location until 1980, when he retired from federal employment. Petitioner's residence at these various locations consisted of an off-base apartment. During the year at issue, petitioner maintained an off-base apartment in Illinois.

While employed by the federal government, including the year at issue, petitioner's wife and children resided at the New York City residence. During 1979, petitioner would return to visit his family at least twice a month, usually arriving in New York City on a Friday and departing on Monday. He would also return to the New York City residence on various holidays during the year. At the hearing, petitioner testified that he considered himself a "resident" of New York State and that his children always considered the New York City residence to be where their father lived.

In the years when petitioner was employed at the various Air Force bases away from New York City, including the year at issue, he filed joint United States individual income tax returns with his wife using the New York City address. In 1979, petitioner filed with the Illinois Department of Revenue a nonresident personal income tax return indicating a married filing separately status. Also in 1979, petitioner's wife filed a New York State Income Tax Resident Return, Form IT-201, using the New York City address and indicating a single filing status. The return showed petitioner's income on Schedule A but computed the amount of tax due only on his wife's income. In addition, the return was signed only by his wife.

In addition to the facts found by the Administrative Law Judge we find the following:

> Petitioner's arguments were limited to the following statements appearing in petitioner's Notice of Exception. In the area where the petitioning party is required to indicate the particular findings of fact and conclusions of law excepted to, petitioner states:
>
> > "Arnold A. Robbins did not earn a single dollar during taxable year 1979 in the State of New York" (petitioner's exception, p. 1).

On the portion of the exception form where the party taking exception requests alternative findings of fact and conclusions of law, petitioner states:

> "[The] Issue is Source of Income;
> Not place of Residence!!
> All of Income for 1979 was
> earned in State of Illinois
> Not New York State - for
> Arnold A. Robbins" (petitioner's
> exception, p. 2).

## *OPINION*

The Administrative Law Judge determined 1) that petitioner Arnold A. Robbins was a domiciliary of New York during the year at issue, thus, was a "resident individual" under Tax Law § 605 (former [a]); 2) petitioner did not file a State income tax return for this year; and 3) the income earned by petitioner outside New York during this period was includable in determining petitioner's New York taxable income.

On exception, petitioner asserts that because all of the income in question was earned outside of New York, this income is not subject to New York State income tax. Petitioner further holds it to be irrelevant that he was a resident of New York throughout this period.

The Division of Taxation (hereinafter "the Division") contends that the exception filed by petitioners should be dismissed for failure to be in proper form, as it fails to advance an argument that would require reversal or modification of the determination at issue. Alternatively, the Division argues that the source of petitioner's income is simply not relevant in determining whether petitioner, a resident of New York State for the year 1979, must include this income for purposes of determining New York taxable income.

We affirm the determination of the Administrative Law Judge.

We will first address the issue of whether petitioner's exception should be dismissed for failure to be in proper form. The form of a taxpayer's notice of exception is governed by the rules of the Tax Appeals Tribunal, which state that "[t]he exception contain . . . the particular

findings of fact and conclusions of law with which the party disagrees . . . the grounds of the exception . . . and . . . alternative findings of fact and conclusions of law" (20 NYCRR 3000.11[b][1][i], [ii], [iii]). Petitioner simply states in his filed exception, "Issue is source of income, not place of residence" (Petitioners' Notice of Exception, p. 2). The Division, in response to the exception, states that "the petitioner has not indicated what findings of fact or conclusions of law are disagreed with in this matter" (Division's letter brief, p. 1). Therefore, the Division asserts that the exception should be dismissed because it is not in the proper form.

We cannot agree.

The issue is the standard of scrutiny to be applied to pro se pleadings to determine if they conform to our regulations. This is an issue of first impression for this Tribunal. We approach it with due recognition of the principle that informative pleadings are an essential factor to the system of resolving tax disputes which this Tribunal administers.

We find it helpful to refer to Federal tax cases for guidance. The policy of the United States Tax Court is that pleadings by pro se taxpayers should be held to less stringent standards than formal pleadings drafted by lawyers and should be liberally construed (see, Becker v. Commissioner 751 F2d 146, 85-1 USTC ¶ 9104; see, Christensen v. Commissioner, 786 F2d 1382, 86-1 USTC ¶ 9328). Persuasive reasoning for the policy is expressed in Christensen where the United States Court of Appeals for the Ninth Circuit, after reviewing case law on the subject, stated:

> "The policy allowing liberal reading of pro se pleadings is particularly appropriate in tax cases. Taxpayers, unassisted by trained attorneys, are likely to have difficulty understanding the intricacies of tax litigation and procedure. Tax disputes that involve relatively minor sums may be of great significance to less wealthy taxpayers. Such taxpayers' access to Tax Court review should not be barred by legal technicalities" (Christensen v. Commissioner, supra, 86-1 USTC ¶ 9328, at 83,683).

We find this policy of a "liberal reading" of pro se pleadings appropriate for this Tribunal.

We now turn to an analysis of petitioner's exception. The critical portion of the exception states "[The] issue is source of income, not place of residence." Although inartfully drafted, this statement effectively communicates an assertion that petitioner's domicile was erroneously used by the Administrative Law Judge to determine whether petitioner's out-of-state income was subject to State tax. Further, this statement may be read to assert petitioner's contention that the source of his income should be the controlling issue. Thus, upon construing petitioner's exception liberally, we find that this statement is sufficient to represent the disputed conclusion of law, as well as the grounds for petitioner's exception (see, 20 NYCRR 3000.11[b][1][ii]). In addition, this restatement of the issue patently implies that the conclusion advocated by petitioner is contrary to that reached by the Administrative Law Judge (see, 20 NYCRR 3000.11[b][1][iii]). We find, based on these particular facts, that the formal deviations in petitioner's exception are excused by his substantial compliance with the regulations. Accordingly, we hold that these deviations do not justify depriving petitioner a review on the merits.

Moreover, we do not adopt the standard offered by the Division in determining whether the merits of an exception shall be reached. The Division contends that petitioner's exception must advance an argument that would require reversal or modification of the determination at issue. However, the Division fails to offer any authority for this standard, nor any justification for a departure from the requirements stated in the regulations (see, 20 NYCRR 3000.11[b][1]).

We will now examine the merits of petitioner's exception. Upon examination of the applicable statutes regarding this issue, we hold that the income earned by petitioner, a New York State resident, outside New York during the period at issue was includable in his New York taxable income. Tax Law § 611(a) states that "[t]he New York taxable income of a resident individual shall be his New York adjusted gross income." Tax Law § 612(a) defines New York adjusted gross income of a resident individual as his Federal adjusted gross income (with certain modifications not relevant here). Therefore, we agree with the Administrative Law Judge that the starting point in computing petitioner's New York State tax liability for 1979 is his Federal

adjusted gross income as reported on the joint United States individual income tax return filed by petitioner and his wife.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners Arnold A. and Lottie M. Robbins is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Arnold A. and Lottie M. Robbins is denied; and

4. The Notice of Deficiency dated June 12, 1987, as modified by the order of the conciliation conferee, is sustained.

DATED: Troy, New York
May 23, 1991

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner