STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
STANFORD E. TAYLOR AND DOROTHEA L. TAYLOR	:	DECISION DTA No. 810047
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1987.	:	

Petitioners Stanford E. Taylor and Dorothea L. Taylor, 12 Hawk Drive, Lloyd Harbor, New York 11743, filed an exception to the determination of the Administrative Law Judge issued on November 4, 1993. Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Gary Palmer, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation submitted a letter on January 11, 1994 stating that no brief in opposition would be filed. This date began the six-month period for the issuance of this decision.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioners have established that they changed their domicile from New York to Vermont for the year at issue and were, therefore, not properly taxable as residents of New York.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioners, Stanford E. Taylor and Dorothea L. Taylor, own a home in Lloyd Harbor, New York. This waterfront home, which petitioners purchased in 1964, contains over 5,000 square feet of living space.

Petitioners purchased a home located on West Hill Road, Wallingford, Vermont in approximately 1970. Formerly an inn, this is a 6,000 square foot, 22-room home, located on 600 acres and contains several miles of horse trails.

Petitioners also maintained a home in Florida during the relevant period.

All of petitioners' homes were fully furnished.

Petitioners filed a joint New York State Nonresident Income Tax Return (Form IT-203) for the year 1987. For that same year, petitioners also filed a joint Vermont resident income tax return.

For every year prior to 1987, petitioners filed New York State resident income tax returns.

On their 1987 New York nonresident and Vermont resident income tax returns, petitioners listed West Hill Road, Wallingford, Vermont as their mailing address. Petitioners also listed this address on their 1987 Federal income tax return.

Petitioner Stanford Taylor was president of Instructional/ Communications Technology, Inc. ("I/CT"). Formed in 1972, I/CT was in the business of creating and selling educational materials related to reading improvement. I/CT sold these materials to schools.

As president, petitioner was ultimately responsible for all aspects of I/CT's operation. Petitioner concentrated on creating the educational materials sold by I/CT. Petitioner was not involved in I/CT's financial or sales activities on a day-to-day basis. I/CT employed a comptroller to manage I/CT and this individual reported to petitioner. On days he was in New York, Mr. Taylor generally went into the I/CT office (located in Huntington Station, New York) to work. Petitioner typically worked in the office from about 10 or 11 A.M. until 4 or 5 P.M.

Petitioners, along with their son, own 85 to 90 percent of the stock of I/CT. Petitioners' son is the largest single shareholder. Petitioners gave the stock to their son in the hope that it would be of value to him.

For the years prior to 1986, I/CT made a profit. In 1986, I/CT suffered a loss of over $90,000.00 (down from a profit of $85,000.00 in 1985). Given this loss, Mr. Taylor elected to take a cut in salary and to apply that money to I/CT's sales operation.

There is no dispute in the instant matter that petitioners were domiciled in New York prior to 1987. For 1987, petitioners claimed that they changed their domicile to Vermont. At hearing, Mr. Taylor testified that petitioners reached a decision in late 1986 to change their domicile based upon a number of factors. Mr. Taylor testified that among these factors was his son's graduation from high school in 1986 and his enrollment at Cornell University in the fall of 1986. Petitioners thus no longer had any children residing at home. Also, Mr. Taylor determined that his daily presence at I/CT was not necessary and that he could perform his business function while living in Vermont.

Petitioners could easily afford to own and maintain their home in New York during 1987 and continued to do so. Petitioners also continued to employ a live-in housekeeper at their New York home.

Petitioners did not consider selling their New York home because: (1) as noted, they could afford it; (2) the property was waterfront and therefore unique and valuable; and (3) the possibility existed that their son might want to use the house following his college graduation.

In January 1987, petitioners' registered to vote in Vermont. They did not actually vote in Vermont in 1987, however, because they were unaware of the local election held that year.

Petitioners had been registered to vote in Suffolk County, New York prior to 1987. In 1988, petitioners changed their voting registration back to New York.

In 1987, petitioners opened a bank account in Vermont at the Howard Bank. Petitioners continued to maintain accounts at several New York banks during that year. Petitioners also had a Florida bank account.

A review of petitioners' 1987 Form 1040, schedule B, reveals that petitioners earned $5,163.00 in interest on their Howard Bank account out of total bank interest income of approximately $77,300.00

Petitioners submitted into evidence a copy of a Howard Bank statement of account dated June 19, 1987. This statement was addressed to petitioners at their Hawk Drive, Lloyd Harbor, New York address.

During 1987, petitioner Stanford Taylor had a New York driver's license which had a 1988 expiration date. Petitioners had three cars registered in Vermont and three cars registered in New York.

In approximately April 1987, petitioners notified their insurance agency that their Vermont home would be their primary residence.

Petitioners opened a safe deposit box at The Howard Bank in February 1987.

Petitioners also joined the Equinox Country Club in Manchester, Vermont in 1987, and contributed to the Dorset, Vermont Theatre Festival. Petitioners also joined the Southern Vermont Art Center and the Vermont Timberland Owners' Association. Additionally, petitioners entered into a forest management plan for their approximately 600 acres of Vermont land.

Also in 1987, petitioners purchased two riding horses for their personal use and enjoyment. Petitioners' Vermont property had a training ring and several miles of riding trails.

Petitioners revised their wills in 1987 to indicate a Vermont residence. This was consistent with their standard practice of revising their wills approximately every two years. Petitioners subsequently revised their wills in 1989 to indicate a New York residence.

Petitioners went to their long-time physicians in Great Neck, New York for their annual physicals in 1987. Mr. Taylor was treated by a Vermont chiropractor in 1987.

Petitioners continued to use their long-time, New York-based accountant in 1987. Petitioners used both New York and Vermont attorneys in 1987.

In 1986, petitioners were advised by their accountant that their Vermont resident income tax liability would exceed their New York resident income tax liability by about $5,000.00.

At hearing petitioners introduced into evidence a document (Exhibit "8") listing their whereabouts during 1987. This document indicated that petitioners spent 180 days in Vermont, 159 days in New York and 26 days elsewhere during 1987. On brief, petitioners contended that the record herein established that petitioners could not have spent more than 175 days in New York in 1987. In response, the Division of Taxation ("Division"), in its brief contended that the record herein showed that petitioners did spend 175 days in New York in 1987.

While in Vermont during 1987, Mr. Taylor was in frequent contact with I/CT by telephone.

Petitioners' Vermont telephone bills were addressed to their New York address.

In 1987, I/CT sustained losses of about $156,000.00. I/CT also lost several of its field representatives during that year. Furthermore, it was apparent I/CT would require loans to continue operating and that the source of such loans would be petitioners. Mr. Taylor determined, therefore, that it would be necessary for him to spend more time at the I/CT offices and to become more involved in the business operations.

Petitioners thus decided to spend more time in New York in 1988. Petitioners notified their homeowner's insurance agency that their primary residence in 1988 would once again be New York. Petitioners filed New York State resident income tax returns for 1988 and all subsequent years.

On audit, the Division determined that petitioners were residents of New York during the year at issue and, therefore, adjusted petitioners' New York adjusted gross income from a reported $2,558.00 to $414,491.00, petitioners' adjusted gross income as reported on their Federal return. The Division then determined petitioners' "corrected" New York taxable income by allowing itemized deductions as reported on the Federal return of $45,253.00 and personal exemptions totalling $2,700.00 to reach taxable income of $366,538.00. The Division then

computed petitioners' additional income tax liability resulting from these adjustments to be $43,092.76. The Division advised petitioners of these adjustments by Statement of Audit Adjustment dated August 12, 1991.

On October 3, 1991, the Division issued to petitioners a Notice of Deficiency which asserted additional personal income tax due of $43,092.76, plus penalty pursuant to Tax Law § 685(b) and (p) and interest for the year 1987.

At the hearing held in this matter, the Division served upon petitioners' representative a Notice of Claim and asserted thereby a deficiency greater than that asserted in the October 3, 1991 Notice of Deficiency. By its Notice of Claim, the Division asserted $15,705.05 in additional income tax due from petitioners over and above that asserted in the statutory notice, plus penalty and interest.

The basis of the Division's assertion of such greater deficiency was petitioners' interest income of $133,660.00 earned on municipal bonds issued by states other than New York. Specifically, petitioners provided the Division with a list of their total municipal bond interest for 1987. This information indicated total interest earned on such bonds of $277,305.00. Of this amount $143,645.00 was earned on New York bonds. The Division determined that the remaining $133,660.00 in interest was properly subject to New York personal income tax. Included in this $133,660.00 amount was $26,250.00 in interest on bonds issued by the Commonwealth of Puerto Rico.

On brief, the Division conceded that the $26,250.00 earned on the Puerto Rico bonds was not properly subject to tax, leaving $107,410.00 asserted in taxable bond interest income. The Division noted that its assertion of tax due by its Notice of Claim should be adjusted accordingly.

OPINION

The Administrative Law Judge determined that petitioners did not prove by clear and convincing evidence that they intended to change their domicile from New York to Vermont. The Administrative Law Judge found that among the factors weighing against petitioners were

Mr. Taylor's business ties to New York, the retention of their historical home in New York and the days spent in New York by Mr. Taylor during 1987. Specifically, the Administrative Law Judge found that Mr. Taylor's business ties to New York were significant. He was actively involved with I/CT designing product, spent a considerable amount of time at I/CT's offices in New York and was in frequent telephone contact with I/CT. The Administrative Law Judge, citing Matter of Kartiganer (Tax Appeals Tribunal, October 17, 1991, affd Matter of Kartiganer v. Koenig, 194 AD2d 879, 599 NYS2d 312), stated that: "'active' business ties have been considered an indication of a failure to abandon a New York domicile" (Determination, conclusion of law "E"). In addition, the Administrative Law Judge, relying on Matter of Wechsler (Tax Appeals Tribunal, May 16, 1991), found that while retaining a historical New York home does not preclude establishing a change of domicile, petitioner's retention of their historical home did preserve a significant tie to New York. In view of petitioners' substantial use of the home, the Administrative Law Judge gave little weight to petitioners' contention that they wanted the home to be available to their son upon his graduation from college. Further, the Administrative Law Judge found that the time spent by petitioners in New York in 1987 (about as much time as petitioners spent in Vermont) weighed against petitioners' position that they changed their domicile to Vermont.

The Administrative Law Judge further found that there was a lack of evidence in the record to show what petitioners' lifestyle was before 1987 and to what degree it changed in 1987. Finally, the Administrative Law Judge found that the secondary factors put forth by petitioners in support of their position, e.g., Vermont voter registrations, Vermont codicils and a Vermont bank account were negated by other secondary factors such as Mr. Taylor's New York driver's license, petitioners' use of New York professionals and petitioners' several New York bank accounts, etc.

Lastly, the Administrative Law Judge found that the interest petitioners earned on municipal bonds of states other than New York was properly includable in New York adjusted gross income.

On exception, petitioners continue to argue that they do qualify as Vermont State residents for the year 1987. Petitioners argue that the evidence entered into the record and their testimony clearly supports their intention to make Vermont their domicile. Petitioners assert that their lifestyle was centered in Vermont as evidenced by the social/recreational activities they engaged in in Vermont during the year 1987. In addition, petitioners continue to argue that they "intended to change their domicile to Vermont despite their understanding that they would likely pay more (some $5,000) in Vermont state income taxes as Vermont residents . . ." (Petitioners' brief, p. 2).

Petitioners also continue to argue that the record shows a substantial reduction in Mr. Taylor's business involvement. Petitioners contend that "the more creative involvement of Mr. Taylor was in keeping with the adoption of a Vermont lifestyle" (Petitioner's brief, p. 3). Petitioners further argue that the frequency and duration of the telephone calls to I/CT clearly indicate a nominal involvement with the business and that Mr. Taylor's testimony substantiates that he spent a limited amount of time at I/CT.

Petitioners also argue that because they chose to change their domicile back to New York in 1988 due to business concerns, this does not alter the fact that they considered Vermont to be their domicile in 1987 and there is nothing in the record to indicate that petitioners planned to change their domicile back to New York at any time during 1987. In addition, petitioners assert that their decision to retain their New York home was a "logical personal and business decision" (Petitioner's brief, p. 4). Petitioners continue to argue that they retained their New York home because they could afford it, it was unique and there was the possibility their son might want it for his future home.

Petitioners argue that the record and Mr. Taylor's testimony regarding the days spent in New York and in Vermont clearly show that petitioners had made Vermont the center of their activities and their domicile. Petitioners allege that the calculation of the number of days spent in New York was wrong because "all days spent traveling to and from Vermont or to New Jersey were counted inappropriately as New York days" (Petitioners' brief, p. 5).

Finally, petitioners request that penalty be waived as there was no pretense or deception practiced.

In response, the Division asks that the determination of the Administrative Law Judge be affirmed.

Petitioners, for the first time on exception, have raised the issue of whether the negligence penalty and the penalty for substantial understatement of liability should be abated. Pursuant to Tax Law § 689(e), the burden of proof is on the petitioner to show why penalty should not be imposed. Petitioners here have not put forth any evidence as to why these penalties should be abated and, therefore, the penalties are sustained.

We find it unnecessary to decide petitioners' contention that the Division miscalculated the number of days spent in New York as the difference between petitioners' calculation (petitioners never claimed less than 159 days in New York) and the Division's calculation (petitioners spent 175 days in New York) is minor and this matter deals with whether petitioners were domiciliaries of New York, not whether they were statutory residents of New York (Tax Law § 605 [former (a)]). Thus, the exact number of days petitioners spent in New York is not in issue.

All of the remaining arguments raised by petitioners were completely and accurately addressed by the Administrative Law Judge. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Stanford E. Taylor and Dorothea L. Taylor is denied;

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

3. The petition of Stanford E. Taylor and Dorothea L. Taylor is denied; and

4. The Notice of Deficiency, dated October 3, 1991, and the Notice of Claim, as adjusted pursuant to finding of fact "38" of the Administrative Law Judge's determination, are sustained.

DATED: Troy, New York
June 23, 1994

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

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