

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>LEONHARDT L. RAUSCHER AND KATHRYN H. RAUSCHER :</b>		DECISION
for Redetermination of a Deficiency or for	:	DTA No. 810567
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1987 and 1988.	:	

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Petitioners Leonhardt L. Rauscher and Kathryn H. Rauscher, 1240 Pepperidge Terrace, Boca Raton, Florida 33486, filed an exception to the determination of the Administrative Law Judge issued on August 19, 1993. Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Craig Gallagher, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation resubmitted its hearing brief. Petitioners filed a reply brief on December 6, 1993, which date began the six-month period for the issuance of this decision. Petitioners' request for oral argument was denied.

The Tax Appeals Tribunal renders the following decision per curiam.

***ISSUE***

Whether petitioners have shown that they were domiciled in Florida and were therefore nonresidents of New York during the years in issue.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge except for finding of fact "8" which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Following an audit which determined that petitioners were residents of the State of New York for the years 1987 and 1988, the Division of Taxation ("Division") issued to Leonhardt L. Rauscher and Kathryn H. Rauscher a Notice of Deficiency, dated June 7, 1991, setting forth the following information:

<u>Tax Period Ended</u>	<u>Tax Amount Assessed</u>	<u>Interest</u>	<u>Penalty</u>	<u>Balance</u>
12/31/87	\$ 4,584.45	\$1,409.78	\$2,562.39	\$ 8,556.62
12/31/88	<u>7,472.68</u>	<u>1,604.37</u>	<u>1,923.08</u>	<u>11,000.13</u>
Totals	\$12,057.13	\$3,014.15	\$4,485.47	\$19,556.75

After a conciliation conference held in the Bureau of Conciliation and Mediation Services on November 26, 1991, a Conciliation Order was issued which reduced the total amount of tax in issue and cancelled all penalty with regard to both years in issue. For the year 1987 tax remained the same, while for the year 1988 the total tax due was reduced to \$1,754.20.

According to the notes taken by Ms. Kathy Engelhardt, the auditor assigned to this case, the modification made by the conciliation conferee reflected the finding that petitioners were domiciliaries of the State of New York through March 31, 1988 due to petitioners' demonstration that it was their intention to abandon their New York domicile as of April 1, 1988.

Petitioners continued to protest that portion of the audit period sustained by the conciliation conferee, i.e., the entire year 1987 and the first quarter of the year 1988.

During the years in issue, petitioners filed New York State nonresident income tax returns on Forms IT-203 setting forth their address as 23277 Water Circle, Boca Raton, Florida 33486. On the return for 1987, petitioners claimed their occupations as "self-employed" for husband and "housewife" for wife. Mr. Rauscher filed a schedule C with said 1987 return indicating that he was proprietor of a real estate sales business known as "L. R. Real Estate" of Wainscott, New York.

Additionally, petitioners filed a schedule E with their nonresident income tax return for 1987 which indicated rental and/or royalty income from two business entities, Hampton Mower

and Southfork Honda. A second schedule E was filed with the 1987 return indicating rental income from properties located at 38-40, 42 and 44 Gingerbread Lane, Easthampton, New York.

The New York State nonresident income tax return for the year 1988 indicated the same rental income on attached schedule E's.

Additionally, both the 1987 and 1988 returns reported installment sale income from the sale of various properties owned by petitioners both within and without New York State.

For the year 1987, petitioners reported income from 11 installment sales, 9 of which were within New York State. On the 1988 return, petitioners reported income from 9 installment sales, 7 of which were sales of property within New York State. Additionally, both returns listed schedule E rental properties in which petitioners indicated they maintained active participation in the rental operations.

Petitioner Leonhardt Rauscher executed a revocable trust agreement on May 2, 1990 which mentioned two additional properties, one located on Montauk Highway a/k/a Hands Creek Antiques and property located at Daniels Holes Road in Easthampton, New York. The revocable trust agreement was executed by Mr. Rauscher in Palm Beach County, Florida.

During 1987 and 1988, petitioners spent approximately 150 days in the State of New York between late May and October.

Petitioners have lived most of their lives in the Easthampton/ Wainscott area. Although they purchased a house in Florida in 1974, they did not declare their domicile in Florida until 1982, when Mr. Rauscher allegedly ended his business affiliations in the Easthampton/Wainscott area.

From the mid-1970's Mr. Rauscher began to involve himself in the real estate business, which was a departure from his prior involvement in more hands-on businesses such as a motor vehicle business, a power equipment business, service stations and marinas.

Mr. Rauscher explained that the L. R. Real Estate business listed on his schedule C attached to his 1987 New York State income tax return was, in fact, an inactive business and the office he maintained for said business was leased to a third party which operated a separate business from the same location. However, no explanation of the gross receipts received by L. R. Real Estate or its expenses, as shown on the schedule C, was offered.

We modify the Administrative Law Judge's finding of fact "8" to read as follows:

Mr. Rauscher also retained office space at his residence on Main Street in Wainscott, New York, which now serves as the home of one of his sons. Mr. Rauscher also maintained a telephone listing during the years in issue, as set forth in the 1990 Suffolk County telephone directory, (516) 537-7544. During the years in issue, Mr. Rauscher employed during the audit period, and in fact since 1986, a man by the name of William Messner, who performed bookkeeping duties for approximately two half days per week, performing such tasks as collecting rents on Mr. Rauscher's rental properties.<sup>1</sup>

During the years in issue, Mr. Rauscher maintained a Post Office box address in Wainscott, New York. The Post Office in Wainscott, New York informed the auditor that mail was received at Mr. Rauscher's Post Office box in Wainscott, New York and was collected regularly by his secretary, Mr. William Messner. The Post Office informed the auditor that the mail was not forwarded and that the Post Office box appears to have been used for individual use. The Post Office informed the auditor that originally mail was received on behalf of Hampton Mower Service and Southfork Honda; however, those businesses subsequently acquired have their own Post Office boxes.

A Department of Motor Vehicles search indicated that Mr. Rauscher maintained a New York State driver's license until it was surrendered to the State of Florida on May 1, 1987. Mrs. Rauscher maintained a New York State driver's license until she surrendered it to the State of Florida on December 1, 1988.

Additionally, Mr. Rauscher maintained a registration for his 1986 four-door Cadillac sedan which was purchased and registered in New York at least through January 10, 1990. The

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We modified the Administrative Law Judge's finding of fact "8" to reflect that Mr. Messner worked two half days rather than 2½ days per week for Mr. Rauscher. We made this change at petitioners' request to reflect the record.

registration listed the owner as Leonhardt L. Rauscher of Main Street, Box 190, Wainscott, New York. Also registered to Mr. Rauscher at the same address was a 1984 Sears light trailer which had a registration expiration date of December 31, 1991. Petitioner testified that this registration was still in effect as of the date of hearing.

Petitioners filed a certificate of Florida domicile on January 15, 1982 and produced voter registration cards to the auditor dated February 24, 1986. Petitioners produced a diary kept by Mrs. Rauscher which had been created sometime on or after November 8, 1988. The entry for November 8, 1988 stated, in pertinent part, as follows:

"Leon and I left Wainscott at 5:00 A.M. Tuesday, October 30, 1988. We drove to Hendersonville, N.C. where we have purchased a home. We expect to live this summer and winter in our beautiful home in Boca Raton. I feel very sad about leaving my birthplace and all my family; however, I am sure I will return as a visitor from time to time and also my family will visit me in N.C. and Florida. I love Florida but N.C. is very new territory for me. Time will tell."

Petitioners acquired a home in Wainscott, New York in 1961 which they still owned as of July 23, 1990, when it was disclosed on the residency questionnaire filed by Mr. Rauscher with the Division. In the questionnaire Mr. Rauscher stated that he and his wife "still own it [the house in Wainscott, New York] but am in the process of transferring it to a son who lives in it." Mr. Rauscher also stated that while staying in New York, he stayed at the house he and his wife owned jointly.

Also on the questionnaire Mr. Rauscher stated, in answer to "what is your business, trade, profession or occupation", that he was "semi-retired" or "retired". He gave his principal business address as Box 190, Wainscott, New York and stated that he had a secretary, Mr. William Messner, and a telephone number at which Mr. Messner could be contacted, which was the same telephone number listed in the Suffolk County telephone book under Leon L. Rauscher of Main Street, Wainscott, New York.

Petitioners maintained bank accounts at the Bridgehampton National Bank in Wainscott, New York during the years in issue.

Of all the properties listed, the property referred to as the Halsey House in Wainscott, New York was owned 50% by Mr. Rauscher and 50% by his son. The property referred to as

Hands Creek Antiques was a rental property and petitioners had no connection with the business run therein.

Besides Mr. Messner, who performed bookkeeping duties for Mr. Rauscher, Mr. Rauscher also utilized the services of an attorney in Wainscott as a "trustee" for his properties. His duties were not specified and it was never alleged that petitioners' real property in New York was held in trust.

On April 10, 1987, Mr. Rauscher resigned from the Lion's Club of Easthampton, New York. In a letter of the same date, Mr. Rauscher stated:

"Frankly, since I am now spending by far the majority of the year out of Easthampton, I am of little use to the club and you are probably spending more on me than I am contributing to it."

His April 1987 resignation was acknowledged by John Dana Smith, secretary of the Lion's Club of Easthampton, in a letter dated November 20, 1991.

Although petitioners assert that they changed their domicile in 1982, in 1985 Mr. Rauscher ran for elected office, Town Supervisor of Easthampton, New York. Further, in 1986, petitioners filed a 1985 resident tax return for the State of New York.

### ***OPINION***

The Administrative Law Judge determined that petitioners did not abandon their New York domicile until 1988. In support of his conclusion, the Administrative Law Judge relied on, among other factors, an entry in Mrs. Rauscher's diary made in 1988 which stated clearly petitioners' intention of abandoning their New York domicile. The Administrative Law Judge also determined that during the years in issue the following actions of petitioners support a conclusion that they did not abandon their New York domicile until 1988: (1) petitioners' 1987 nonresident return shows involvement in the real estate business; (2) petitioners received mail at a post office box in Wainscott, New York; (3) Mr. Rauscher employed a secretary who performed bookkeeping and rent collecting tasks; (4) petitioners maintained a telephone line in New York; (5) petitioners retained driver's licenses in New York and car and trailer

registrations in New York; (6) Mr. Rauscher retained a New York attorney as "trustee" for his properties; and (7) petitioners retained New York bank accounts.

The Administrative Law Judge found that petitioners' declaration of Florida domicile, Florida voting registration and homestead exemption are not as persuasive in establishing domicile as the above actions of petitioners. The Administrative Law Judge also found that petitioners failed to introduce any evidence as to their general habits of life, e.g., social ties, to support their claimed change of domicile.

On exception, petitioners continue to argue that they meet every single requirement to establish domicile in Florida and their intent to abandon New York as their domicile has been clearly demonstrated by their actions. Petitioners also continue to argue that the Administrative Law Judge erred or improperly phrased several findings of fact. Specifically, petitioners argue that the Administrative Law Judge erred when he stated that the secretary was employed for 2 and 1/2 days per week. Petitioner states that "Mr. Messner was paid for only 1/2 day Tues. & 1/2 day Thurs." (Petitioners' exception, p. 1). Petitioners also argue that, with respect to the registration of his car in New York, the Administrative Law Judge "failed to tell the full story on this issue" (Petitioners' exception, p. 1). Petitioners assert that the car was registered in New York by mistake. In addition, Mr. Rauscher asserts that he surrendered his New York driver's license in May of 1977. Finally, petitioners argue that, although they had property in trust with a lawyer in New York, they also had property in trust with lawyers in Vermont and North Carolina.

In response, the Division of Taxation states that petitioners have raised no new arguments on exception and it will rely on its hearing brief and the determination of the Administrative Law Judge. The Division asks that the Administrative Law Judge's determination be sustained in full.

In their reply brief, petitioners make the same arguments they made in their exception and brief in support.

With respect to Mr. Rauscher's assertion that he surrendered his driver's license in May of 1977, the Department of Motor Vehicles searches indicate that Mr. Rauscher's license was surrendered to the State of Florida on May 1, 1987 (see, Exhibits "T" and "U"). Thus, the Administrative Law Judge's finding of fact was based on the record. Petitioners remaining arguments are the same arguments made before the Administrative Law Judge. Because the Administrative Law Judge adequately addressed these arguments, 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 Leonhardt L. and Kathryn H. Rauscher is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Leonhardt L. and Kathryn H. Rauscher is denied; and
4. The Notice of Deficiency dated May 28, 1991, as modified by the Conciliation Order dated February 7, 1992, is sustained.

DATED: Troy, New York  
May 12, 1994

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

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