

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**SOL AND ROSLYN (DECEASED) AND LINN S. C. SIEGEL :**      **DECISION**  
DTA No. 810575  
for Redetermination of Deficiencies or for Refund of New York :  
State and New York City Income Taxes under Article 22 of the :  
Tax Law and the New York City Administrative Code for the :  
Years 1986 through 1988. :

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Petitioners Sol and Roslyn (deceased) and Linn S. C. Siegel, 6351 Evian Place, Boynton Beach, Florida 33437, filed an exception to the determination of the Administrative Law Judge issued on September 1, 1994. Petitioners appeared by Horowitz and Goldman, Esqs. (Steven A. Horowitz, and Gary L. Malin, Esqs., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (David C. Gannon, Esq., of counsel).

Petitioners filed a brief on exception. The Division of Taxation filed a letter in lieu of a brief in opposition. Any reply brief was due on December 27, 1994, which date began the six-month period for the issuance of this decision. Petitioners' request for oral argument was denied.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal.  
Commissioners Dugan and DeWitt concur.

***ISSUES***

I. Whether petitioners were domiciliaries of the State and City of New York for the years at issue and were, therefore, taxable as resident individuals for such years.

II. Whether, for the years at issue, petitioners maintained a permanent place of abode and spent, in the aggregate, more than 183 days in the State and City of New York and were, therefore, taxable as resident individuals for such years.

***FINDINGS OF FACT***

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

On August 13, 1990, the Division of Taxation ("Division") issued a Notice of Deficiency to petitioners Sol and Roslyn Siegel asserting a total additional amount due of \$27,709.32 for the years 1986 and 1987. This total amount represented the following:

	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>
1986 State	\$ 5,683.44	\$1,640.88	\$1,672.95	
City	2,564.93	740.53	754.99	
1987 State	6,751.87	1,430.29	1,727.92	
City	<u>3,230.46</u>	<u>684.33</u>	<u>826.73</u>	
Total	\$18,230.70	\$4,496.03	\$4,982.59	\$27,709.32

Previously, on January 17, 1990, these petitioners, by their representative (pursuant to a power of attorney), executed a consent whereby it was agreed that personal income taxes due for the year 1986 could be assessed at any time on or before April 15, 1991.

For each of the years 1986 and 1987, Sol and Roslyn Siegel filed a Form IT-203, nonresident return under the filing status "married filing joint return."

Roslyn Siegel died on February 15, 1987 and petitioner Sol Siegel married Michelle Linn Shiu Chou Sullivan (a/k/a Linn S. C. Siegel) in June 1987.

On August 13, 1990, the Division issued a Notice of Deficiency to Sol and Linn S. C. Siegel asserting a total amount due of \$18,568.46 for the year 1988. This amount consisted of the following:

	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
State	\$9,352.00	\$1,176.61	\$1,991.10	\$12,519.71
City	4,518.31	568.47	961.97	<u>6,048.75</u>
			Total	\$18,568.46

For the year 1988, Sol and Linn S. C. Siegel filed a Form IT-203 under the filing status "married filing joint return."

On May 24, 1990, the Division issued statements of personal income tax audit changes for each of the years at issue. On the first page of each statement, under the heading "remarks", it was indicated that the taxpayer never severed ties to New York for the last 25 years, spends more than 30 days in New York, owns a co-op at 47-30 61st Street, Woodside, New York and is an active shareholder in Liberty Bell Christmas, Inc. ("Liberty Bell").

Attached to the 1986 return was a Wage and Tax Statement (Form W-2) indicating wages paid to Sol Siegel in the amount of \$88,700.00 from Liberty Bell.<sup>1</sup> Mr. Siegel allocated \$10,705.00 of this income to New York on the basis that 28 days were worked in the State.

For 1987, Sol Siegel allocated \$19,515.00 out of total wages of \$88,775.00 received from Liberty Bell to New York on the basis that 51 days were worked in New York.

Attached to the 1988 return (filed jointly with Linn S. C. Siegel) were wage and tax statements from Liberty Bell (\$92,300.00) and Serv-Well Charcoal Co., Inc. (\$38,000.00). Mr. Siegel allocated \$24,289.00 (55 days worked in New York out of a total of 209 days) of his Liberty Bell salary to New York. None of the salary from Serv-Well Charcoal Co., Inc. ("Serv-Well") was allocated to New York.

The address of Liberty Bell, set forth on the wage and tax statements for all of the years, was 1150 Motor Parkway, Central Islip, New York and Mr. Siegel's address was listed as 7460 NW 7th Place, Margate, Florida. The address of Serv-Well, on the wage and tax statement for 1988, was 445 Winding Road, Old Bethpage, New York and the statement was issued to Mr. Siegel at 47-30 61st Street, Woodside, New York.

Petitioner Sol Siegel was employed by Liberty Bell for approximately 47 years. Liberty Bell is in the business of importing Christmas decorations and artificial trim-a-trees. Mr. Siegel developed the importing business approximately 15 years after beginning his employment with

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<sup>1</sup>On both the 1986 and 1987 returns, the amounts set forth on line 1 (wages, salaries, tips, etc.) are greater than the amounts listed on the W-2 form. The record indicates that Roslyn Siegel was not employed, but there is no explanation as to this discrepancy. However, since no issue has been raised with respect to allocation and since, by virtue of the Division's holding that petitioners were residents of the State, all income was held to be taxable, this discrepancy will not be further addressed herein.

Liberty Bell and eventually became a part-owner of the business (the Division's auditor stated that he owned a 29% interest).

Sol Siegel was also employed during the years at issue by Serv-Well of Old Bethpage, New York. His function was to accompany the purchase manager on overseas buying trips and to deal with overseas suppliers (see, Exhibit "I"). The record is unclear as to the years of his employment. Only for the year 1988 was a Wage and Tax Statement from Serv-Well attached to Sol Siegel's return.

In approximately 1961 or 1962, Sol and Roslyn Siegel purchased a cooperative apartment ("the co-op") from Big Six Towers, Inc. located at 47-30 61st Street, Woodside, New York. The co-op, consisting of three bedrooms, was sold by Sol Siegel in 1990.

In the early 1970's, Sol and Roslyn Siegel purchased a home (two bedrooms, family room and swimming pool) located at 7460 NW 7th Place, Margate, Florida 33063. They registered to vote in Broward County in the State of Florida on April 24, 1972.

Between 1980 and 1982, Sol and Roslyn Siegel purchased a one-room condominium on the ocean located in Long Beach, New York. In August 1988, Sol Siegel sold the Long Beach condo to his daughter, Joan Siegel, who testified that the purpose of the sale was to effectuate estate planning, i.e., to remove the asset from Sol Siegel's estate. On an annual basis, this transaction is shown as interest income to Sol Siegel and as an interest expense to Joan Siegel. Sol Siegel annually forgives a part of Joan Siegel's obligation on an installment note executed in connection with this transaction (see, Exhibit "J").

For each of the years at issue (Sol and Roslyn Siegel in 1986, Sol Siegel in 1987 and Sol and Linn S.C. Siegel in 1988), petitioners filed affidavits with Big Six Towers, Inc. which set forth household income. These affidavits (Exhibit "H") indicate that there was a maximum allowable income per apartment which, if exceeded, resulted in a monthly rental surcharge being imposed.

On the affidavit for 1986, gross income of \$28,000.00 was reported. For 1987 and 1988, gross income of \$27,300.00 and \$38,400.00, respectively, was reported thereon. These amounts

do not correspond to either the Federal or New York State amounts on petitioners' New York State tax returns (Exhibits "E", "F" and "G") and each of the amounts is less than the maximum allowable pursuant to the information contained thereon.

Each of the affidavits was sworn to before a Notary Public and, in the upper right portion thereof, contained a directive to list, for each working member of the household, the income reported on Form IT-201 or IT-200 which, it should be noted, are resident returns. As indicated above, petitioners filed nonresident returns (Form IT-203) for each of the years at issue.

Petitioners' brief states that they purchased a home in Florida in 1976 (Exhibit "4" indicates that they registered to vote in Florida in 1972). The brief further states that Mr. Siegel continued to file New York resident income tax returns until 1982 despite the fact that petitioners intended to make Florida their permanent place of residence in 1976. No explanation for this inconsistency was provided by petitioners.

The sole witness who appeared at the hearing to testify on behalf of petitioners was Joan Siegel, the daughter of Sol and Roslyn Siegel. Neither Sol nor Linn S. C. Siegel testified; Roslyn Siegel died on February 15, 1987. Sol Siegel had a heart attack and also had triple bypass surgery performed in 1989.

Joan Siegel stated that she was raised in the Woodside co-op; she moved out in approximately 1970 but continued to reside in New York. The co-op was referred to as the "closet" because that was where all the winter clothing was stored. From the time at which the Florida house was purchased (in the early 1970's), Roslyn Siegel spent all but July and August for each year in Florida and spent July and August in the Long Beach condo. Ms. Siegel testified that her mother never went to the Woodside co-op. She stated that the co-op was retained because of its low cost.

Joan Siegel stated that her father's whole life was his work. He was frequently traveling through the Orient doing business. When in New York, he used the Woodside co-op rather than a hotel. Joan Siegel testified that Liberty Bell paid her father's travel expenses.

On December 20, 1985, Roslyn Siegel suffered a stroke which left her paralyzed and speechless. After the stroke, Roslyn Siegel was in the hospital for approximately ten days and then went into a rehabilitation facility. Joan Siegel immediately went to Florida upon learning of her mother's stroke. Despite the fact that her brother (Roslyn Siegel's son) lived in Florida and that her father (Sol Siegel) was also there, Joan decided to take her mother back to New York because her father was going to the Orient on a business trip. Therefore, at the end of January 1986, she brought Roslyn Siegel to New York to continue rehabilitation at the Rusk Institute where she remained until the end of March 1986 (when Sol Siegel returned from the Orient) whereupon she returned to Florida. Other than the Rusk Institute in New York, all of Roslyn's medical treatment and rehabilitation occurred in Florida (see, Exhibits "5" and "6"). Roslyn Siegel died in Broward County, Florida on February 15, 1987. Her funeral was in Tamarac, Florida and she was buried in a family cemetery plot in Elmhurst, New York.

Joan Siegel testified that her mother wanted her father to retire for many years. She stated that, while he cut down on his workload, he continued to make his trips to the Orient. He spent three or four weeks per year at the Long Beach condo, but spent most of the remaining time in Florida and the Orient.

A letter from Joel Margolin, Liberty Bell's president (see, Exhibit "1"), dated November 7, 1990 states as follows:

"Sol Siegel relinquished day-to-day managerial activities of this company at least ten years ago.

"Mr. Siegel's sole duties of employment since then with Liberty Bell Christmas, Inc. is to deal with overseas suppliers with whom he has long standing ties which requires him to be overseas at their location for several months during the years and to select merchandise to be purchased by Liberty Bell Christmas, Inc. for sale to our customers.

"His New York-related activities are therefore minimal and limited to attendance at a seasonal trade show which usually involves two or three weeks in February."

Sol Siegel's work area log (Exhibit "N") indicates a presence in New York on an almost monthly basis for each of the years at issue. As indicated above, Sol Siegel's income from Liberty Bell was approximately the same for 1986 and 1987 and his income increased slightly in 1988.

During the years at issue, the Queens telephone directory contained a listing for Sol Siegel and for Roslyn Siegel, each at 47-30 61st Street in Woodside (area code 718). There was also a joint listing (Sol and Roslyn Siegel) at 830 Shore Road, Long Beach (area code 516). Joan Siegel attempted to obtain New York Telephone statements as well as Long Island Lighting Company ("LILCO") statements for petitioners' Woodside and Long Beach residences for the years at issue, but was unable to do so (see, Exhibit "2").

The Division submitted invoices and summaries of petitioners' Southern Bell charges for 1987 and 1988 (see, Exhibit "K"). With the exception of January-February 1987, February-March 1987, March-April 1988 and November- December 1988, the monthly charges ranged from approximately \$18.00 to \$26.00 (most were in the \$18.00 to \$22.00 range).

The Division also submitted a letter (see, Exhibit "L") from FPL (Florida Power and Light). This letter was addressed to Sol Siegel and/or Michelle Siegel, 6351 Evian Place, Boynton Beach, Florida 33437, an address which is different from the Margate, Florida home purchased in the early 1970's (see, above). Since it cannot be ascertained to which address this FPL letter applied, it will not be considered herein.

Approximately four months after Roslyn Siegel's death in February 1987, Sol Siegel married Linn S. C. Sullivan (Michelle). A civil marriage ceremony was performed in New York in June 1987 and another "big" wedding was held in Taiwan. Linn was a New York State resident (she continued to reside in New York throughout 1987) and filed resident income tax returns until 1987 (see, Petitioner's brief, p. 6). Her son, Michael, lived with his grandmother in Taiwan and later with his aunt in Chicago. After Linn's marriage to Sol Siegel, they tried to enroll Michael in a school in New York where he was to be under the care of one of his mother's friends, but he ran away and returned to Chicago. Thereafter, Michael moved to Florida and

enrolled in Coconut Creek High in Broward County, Florida for the 1988-1989 school year (see, Exhibit "3"). While residing in Florida, Linn S. C. Siegel was not employed.

While residing in Florida, Roslyn Siegel was not employed. Joan Siegel testified that Roslyn was a "social butterfly" whose friends, after her death, did not accept Sol Siegel's new wife. Therefore, Sol and Linn S. C. Siegel did not go back to the Long Beach condo and it was ultimately sold to Joan Siegel (see, above).

During the years at issue, Sol and Roslyn Siegel maintained bank accounts in both New York and Florida. They did not belong to any religious organizations or houses of worship in either state. They had no safe deposit box; the Florida home had a built-in vault. They belonged to no social or charitable organizations or country clubs in New York or Florida.

Exhibit "N" consists of typewritten work area logs as well as a document entitled "Sol Siegel Chronology" for the period March 5, 1985 through May 20, 1991. A review of these documents reveals many inconsistencies. For example, the work area log for 1986 indicates that Sol Siegel was in Florida, New Jersey, Connecticut and New York from May 1 through May 30. The chronology shows entry into the Republic of China on May 10, 1986 and further indicates that Sol Siegel spent the remainder of May 1986 traveling between the Republic of China and Hong Kong. There are several additional inconsistencies as well. It must also be noted that, except for 1987, the days worked in New York for 1986 and 1988 per the work area logs (53 and 46, respectively) do not correspond to the number of New York days set forth on the 1986 and 1988 returns (see, above). This exhibit also contains photocopies of Sol Siegel's passports and visas but, absent explanatory testimony therefor, are of little value in determining Mr. Siegel's actual whereabouts during the periods at issue herein.

At the hearing, petitioners' representative requested additional time to submit travel vouchers and/or airline tickets used by Sol Siegel. The covering letter attached to petitioners' brief, dated November 12, 1993, indicated that a diligent search of Mr. Siegel's records and his employer's records produced no credit or travel records from 1986 to 1990. Therefore, petitioners' representative requested additional time to obtain and submit travel documentation



from the credit card company of Mr. Siegel's former employer and indicated that this information would be available in approximately four weeks.

By a letter dated November 19, 1993, the Division objected thereto on the basis that the deadline for submitting this additional evidence was the date on which the brief was due (November 15, 1993).

By a letter dated November 19, 1993, the Administrative Law Judge overruled the Division's objection and set forth a revised briefing schedule.

Along with a letter dated December 17, 1993, petitioners' representative submitted the following:

- "1. Liberty Bell Christmas, Inc.'s. American Express Corporate Account records concerning Sol Siegel.
- "2. Liberty Bell Christmas Inc's. expense reports for Sol Siegel.
- "3. A chart prepared by this office delineating Sol Siegel's Travel Itinerary for the years 1986-1988. This chart summarizes the charge records and expense reports enclosed herewith.
- "4. Affidavit of Bernard Sanford, who was the accountant and controller of Liberty Bell Christmas Inc. during the years involved herein.
- "5. Affidavit of Petitioners' counsel."

In a letter dated December 21, 1993, the Division's representative objected to the introduction into evidence of all but item "1" above, since additional time had not been requested to submit items "2" through "5."

The letter of the Administrative Law Judge, dated December 23, 1993, in response to the Division's objection, stated, in part, as follows:

"You do not object to the American Express records from Mr. Siegel's employer since the record was specifically kept open for the production of these documents. With respect to the remaining documents, I must agree that they cannot now be accepted into evidence. The time for this evidence to have been offered was at the hearing unless petitioner specifically requested (and was granted) additional time therefor. I do find, however, that the affidavit of petitioner's representative, Steven A. Horowitz,

Esq., serves to explain that a diligent search was made and that the records are incomplete and, as such, is relevant to this record. Such affidavit will, therefore, be accepted into evidence along with the American Express records and shall be designated as petitioner's Exhibit No. 7.

"By a copy of this letter, I am advising petitioner's representative that the remaining documents are being returned to him and, accordingly, such documents are enclosed with his copy of the letter."

In a letter, dated December 31, 1993, to Roberta Moseley Nero, Secretary to the Tax Appeals Tribunal, petitioners' representative objected to the Administrative Law Judge's refusal to accept petitioners' additional offerings of evidentiary material, requesting that "Judge Friedman reconsider his decision not to allow said Expense Reports into evidence."

Ms. Moseley Nero's reply letter of January 18, 1994 stated that the letter of December 31, 1994 would be forwarded to Administrative Law Judge Friedman and that the Tax Appeals Tribunal has no involvement in a case prior to an exception being filed.

An examination of these credit card receipts indicates that many were for expenses incurred by Joel Margolin (president of Liberty Bell) as well as by Sol Siegel. Most do not indicate the actual date on which the charge was incurred. Many are illegible.

### ***OPINION***

In the determination below, the Administrative Law Judge reviewed Tax Law § 605(b)(1) relating to resident individuals, the Division's regulations (20 NYCRR former 102.2[d]) pertaining to domicile, and 20 NYCRR former 102.2(e)(1) which defines a permanent place of abode.

The Administrative Law Judge held that:

"[t]o effect a change in domicile, there must be an actual change in residence, coupled with an intent to abandon the former domicile and to acquire another (Aetna National Bank v. Kramer, 142 App Div 444, 445, 126 NYS 970). Both the requisite intent as well as the actual residence at the new location must be present (Matter of Minsky v. Tully, 78 AD2d 955, 433 NYS2d 276)" (Determination, conclusion of law "C").

The Administrative Law Judge then found it necessary to review the acts of petitioners in order to ascertain their intent since neither Sol Siegel nor Linn C. Siegel appeared at the hearing to testify and Roslyn Siegel was deceased. Upon such review, he held that:

- 1) "If 1982 is the point at which the intent to abandon their previous domicile (New York) and to acquire a new one (Florida) occurred, this record contains no evidence to substantiate this intent" (Determination, conclusion of law "D");
- 2) it cannot be found that Sol Siegel reduced his active participation in the companies he was involved in and, further, there is no evidence that his salary was greater in the years prior to the audit period;
- 3) petitioner Sol Siegel has not proven, by clear and convincing evidence, that he ever relinquished his New York domicile during the years 1986 through 1988; and
- 4) Roslyn Siegel's domicile and Linn S. C. Siegel's domicile have no relevance since joint returns were filed for the audit years.

The Administrative Law Judge, in reviewing 20 NYCRR former 102.2(c) relative to the requirement of having adequate records to substantiate the fact that a petitioner did not spend more than 183 days of a taxable year within New York State, rejected the documentary evidence of petitioner Sol Siegel relating to this question, holding that "[t]he work area logs and chronology (both contained in Exhibit 'N') contradict each other during various periods of the years at issue" (Determination, conclusion of law "E").

Finally, the Administrative Law Judge held that the passport, visa documents and American Express records were not adequate proof that petitioner Sol Siegel did not spend more than 183 days in New York during the years 1986, 1987, and 1988, and, therefore, the Division properly held petitioners as taxable residents.

On exception, petitioners argue they have demonstrated that they were neither domiciliaries nor statutory residents of New York State and New York City during the years at issue.

Petitioners argue that "[e]ven though [they] maintained a 'permanent place of abode' in New York State, they were not present in New York for more than 183 days and as a result, no income tax should be imposed upon them" (Petitioners' brief on exception, p. 4).

Petitioners also argue that even though they maintained ties with the State of New York, their move to Florida was with the bona fide intention of making a permanent and fixed home there and their actions to align themselves with the State of Florida and their "general habit of life" clearly establishes this intent.

As to the 183 day issue, petitioners argue that "[w]hile an exacting detail of each specific day during the three year audit period was not produced, the documents that were presented clearly establish that Sol did not spend more than 183 days in New York during any of the years at issue" (Petitioners' brief on exception, p. 11).

The Division, by letter brief and with reference to their brief below for a more in-depth analysis of the points presented, argues in reply that the determination of the Administrative Law Judge should be affirmed and the notices of deficiency sustained.

The Division argues that, while petitioner Sol Siegel's failure to appear and testify at hearing substantially damaged his position, same was not fatal but left petitioners with the unenviable burden of demonstrating, in a clear and convincing manner, an intention to change domicile based solely on documentary evidence.

The Division also argues that petitioners have failed to meet their burden of proof in a clear and convincing manner relating to the issue of a change in domicile because:

- 1) petitioners concede that Sol Siegel's deep involvement and commitment to his employment was the most important part of his life, said concession being supported by his daughter observing that he was irreplaceable at work, the continual family struggles for his time and attention, and his lack of both friends and a personal life;
- 2) of Sol Siegel's level of income both before and during the audit period;

3) petitioners' living arrangements in acquiring residences in New York, then Florida and then New York again goes against the assertion that they were gradually shifting the focus of their lives from one part of the country to the other (Division's letter brief);

4) petitioners' actions relating to the Woodside residence which is an example of petitioners' propensity to flip-flop on the question of domicile so as to advance their immediate interest; and

5) of the limited evidence presented concerning traditional domicile factors.

As to the issue of statutory residency, the Division argues that the evidence presented was inadequate proof, other than to show that petitioner Sol Siegel frequently traveled abroad.

We affirm the determination of the Administrative Law Judge. Further, because the issues raised on appeal are the same as those raised before the Administrative Law Judge, and because we find that the Administrative Law Judge completely and adequately addressed the issues before him, we deem it unnecessary to analyze these issues any further. Therefore, we affirm the Administrative Law Judge for the reasons stated in his determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sol and Roslyn (Deceased) and Linn S. C. Siegel is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Sol and Roslyn (Deceased) and Linn S. C. Siegel is denied; and

4. The notices of deficiency issued August 13, 1990 are sustained.

DATED: Troy, New York  
June 22, 1995

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

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

/s/Donald C. DeWitt  
Donald C. DeWitt  
Commissioner