STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GAYTON AND PAMELA CICCONE	:	DECISION DTA No. 812607
for Redetermination of a Deficiency 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 1989 and 1990.	:	

Petitioners Gayton and Pamela Ciccone, 2 Inlet Terrace, Belmar, New Jersey 07719, filed an exception to the determination of the Administrative Law Judge issued on November 22, 1995. Petitioners appeared by McDermott, Will & Emery (Arthur R. Rosen and Diann L. Smith, Esqs., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Craig Gallagher, Esq., of counsel).

Petitioners filed a brief on exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Oral argument was not requested.

Commissioner DeWitt delivered the decision of the Tax Appeals Tribunal. Commissioner Jenkins concurs. Commissioner Pinto took no part in the consideration of this decision.

ISSUE

Whether Tax Law §§ 605(b)(1) and 1305(a), as applied to petitioners, violate the Commerce Clause of the United States Constitution or Section 3, Article XVI of the New York State Constitution.

FINDINGS OF FACT

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

Petitioners, Gayton and Pamela Ciccone (hereinafter "Ciccone"), were issued a Statement of Personal Income Tax Audit Changes, dated October 28, 1992, which set forth total additional New York State and New York City income taxes for the years 1989 and 1990 in the sum of $19,947.00, plus interest of $3,637.00, for a total amount due of $23,584.00. The actual breakdown of additional tax due for each of the taxing jurisdictions for each of the years in issue is as follows:

	New York State	New York City
1989	$1,664.00	$6,924.00
1990	$2,086.00	$9,273.00

The Statement of Personal Income Tax Audit changes included an explanation for the assessment which stated as follows:

"Taxpayers are deemed to be resident individual [sic] of New York State & New York City in accordance with NY Tax Laws ch. 60, Art. 22, Sec. 605[,] NY Tax Laws ch. 60, Art. 30, Sec. 1305 [and] NYC Art. 11, ch. 17, Sec. 11-1705."

A Notice of Deficiency, dated December 3, 1992, was issued to petitioners for the years 1989 and 1990, setting forth additional personal income taxes due for both New York State and New York City in the sum of $19,947.00 plus interest.

Petitioners protested the notice and a conference was held in the Bureau of Conciliation and Mediation Services on October 26, 1993, subsequent to which an order was issued, dated November 26, 1993, which sustained the notice in full.

Petitioners appealed the order of the conciliation conferee to the Division of Tax Appeals on the basis that the determination of the Division of Taxation that petitioners were residents of the State and City of New York was in violation of the

Due Process Clause, the Privileges and Immunities Clause and/or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

During the years in issue, petitioners were domiciled in the State of New Jersey, residing at 2 Inlet Terrace, Belmar, New Jersey. In addition to owning this home, they also owned property at 321 Sea Spray Lane, Neptune, New Jersey and Mr. Ciccone had an interest with his mother in property located at 1628 Dumont Avenue, Wall, New Jersey.

Petitioners also leased an apartment in New York City at 353 East 83rd Street, which had two bedrooms and approximately 1500 square feet.

Mr. and Mrs. Ciccone filed jointly for purposes of their 1989 and 1990 New York State nonresident tax returns (IT-203) and New York City nonresident tax returns (NYC 203).

In his 1989 City of New York Nonresident Earning Tax Return, Mr. Ciccone stated that he worked 215 days in New York City in 1989 and Mrs. Ciccone stated that she worked 212 days in New York City in 1989.

In their 1990 City of New York Nonresident Earnings Tax Return, Mr. Ciccone stated that he worked 215 days in New York City during 1990 and Mrs. Ciccone stated that she worked 210 days in the City during 1990.

During the years in issue, Mr. Ciccone was a trader in government bonds for S G Warburg, 787 Seventh Avenue, New York City. Mrs. Ciccone was a sales person for Metro Magazines Inc., 1500 Walnut Street, Philadelphia, Pennsylvania, which also had an office in New York City, where Mrs. Ciccone worked on a daily basis. Petitioners worked five days per week roughly between the hours of 8 A.M. and 5 P.M.

Generally, petitioners commuted to New York City from their New Jersey home and stayed overnight in their New York City apartment, returning to their New Jersey home on the weekends. The New York City apartment was used for entertaining as well, but petitioners did not elaborate upon the extent or substance of the entertaining activities. However, Petitioners did not maintain diaries or supply other documentation to establish how many nights were spent in the New York City apartment or exactly how many days they spent in the State of New York.

Mr. Ciccone testified that he and his wife spent two or three nights per week at the apartment for the purpose of job-related entertaining and that it was easier than travelling all the way back to their New Jersey home, 45 miles away.

On their New York City nonresident earning tax returns for 1989 and 1990, petitioners stated that neither of them maintained an apartment or other living quarters in the City of New York during any part of the years in question. Further, even though the auditor asked for the same information, she was not provided any information and independently discovered the apartment at 353 East 83 Street through the address on Citibank bank statements. Even when the auditor had discovered the New York City apartment and confronted petitioners' representative with the information, she was provided with no further information.

Petitioners belonged to the Belmar Fishing Club in New Jersey and the New York Athletic Club in New York City. Petitioners used physicians in New York City and had their clothes cleaned there as well. However, the auditor noted in her memorandum to the audit file that her analysis of cancelled checks revealed that most of petitioners' activities occurred outside New York.

Although the auditor requested copies of all deeds and leases for all residences, address of garage space rented, a list of all banks petitioners had accounts with and information pertinent thereto, all cancelled checks and bank statements, all credit card statements and charge statements, telephone bills for all residences, utility bills and bills for dues, subscriptions to clubs, social and professional organizations, diaries or appointment books that would have established nonresidency for the audit period and a breakdown of petitioners' residency since 1975, petitioners did not provide said documentation. The request was made by letter, dated January 23, 1992.

Both Mr. and Mrs. Ciccone travelled as part of their jobs during the years in issue, but it was not divulged in the record what the extent of the travel was. In any event, there was no evidence to dispute the number of days they worked in New York City as set forth in their tax returns for the years in issue.

The parties agreed that Mr. and Mrs. Ciccone were not domiciled in the State of New York during the years in issue.

OPINION

In his determination, the Administrative Law Judge concluded that the only issue before him was whether the petitioners were "residents" of the State of New York and the City of New York for income tax purposes during the years at issue, as that term is defined in Tax Law §§ 605(b)(1)(B) and 1305(a) and applicable regulations. Tax Law § 605(b)(1)(B) defines a "resident individual" for State income tax purposes as one who:

> "is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state. . . ."

Tax Law § 1305(a)(2) defines a "city resident individual" for New York City income tax purposes as one who:

> "is not domiciled in such city but maintains a permanent place of abode in such city and spends in the aggregate more than one hundred eighty-three days of the taxable year in such city. . . ."

The Administrative Law Judge concluded that there was no dispute that petitioners maintained a permanent place of abode in the City and State of New York. Further, petitioners admitted on their New York City earnings tax returns for the years in issue that they worked in the City in excess of 200 days each year. "Given the definitions of 'resident' and days spent in the State and City of New York, coupled with petitioners' failure to submit evidence to establish that they did not spend less than 183 days in the State and City, they failed to meet their burden of proof and the notice is sustained" (Determination, conclusion of law "B"). As to petitioners' arguments that Tax Law §§ 605(b)(1)(B) and 1305(a) and New York City Administrative Code § 11-1705(b)(1)(B) are violative of the Due Process and Equal Protection Clauses of the United States Constitution, the Administrative Law Judge concluded that:

> "Petitioners' argument is clearly directed to the facial constitutionality of the statutes themselves as opposed to their application to petitioners. As enunciated in Matter of Brussel (Tax Appeals Tribunal, June 25, 1992):
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> 'The jurisdiction of this Tribunal, as

> prescribed in its enabling legislation, does not encompass challenges to the constitutionality of a statute on its face (Matter of Wizard Corp., Tax Appeals Tribunal, January 12, 1989; Matter of Fourth Day Enters., Tax Appeals Tribunal, October 27, 1988). At this level of review, we presume that statutes are constitutional'" (Determination, conclusion of law "C").

As a result, the Administrative Law Judge denied the relief sought in the petition.

On exception, petitioners do not dispute that they maintained a permanent place of abode in New York City, as that term is used in Tax Law §§ 605(b)(1)(B) and 1305(a), or that they each spent in excess of 183 days in the City of New York during the years at issue. According to petitioners' brief in support of their exception, "the only issue in this case concerns whether Section 605(b)(1), as applied to Petitioners, violates the Commerce Clause of the United States Constitution or Section 3, Article XVI of the New York State Constitution or both" (Petitioners' brief, p. 2). Petitioners argue that section 605(b)(1) is unconstitutional as applied to them because it violates the internal consistency test which was first suggested by the United States Supreme Court in Container Corp. of Am. v. Franchise Tax Bd. (463 US 159). Petitioners argue that internal consistency requires that when states determine how much of a taxpayer's income they may tax, their apportionment formula must be such that, if the same tax was applied by every jurisdiction, there would be no multiple taxation of the same income. Petitioners argue that New York State imposes its personal income tax on the income of residents from all sources while it imposes tax on the income of non-residents only to the extent that such income is sourced to New York State. While residents are allowed a credit against their New York State personal income tax liability for income taxes paid to other states on income derived from sources within those states and subject to tax under New York law, there is no personal income tax credit for non-residents. Here, petitioners are domiciliaries of the State of New Jersey and meet the statutory test as residents of New York as well. Therefore, if both New York and New Jersey adopted New York's residency rules (§ 605[b][1]), petitioners would be taxed on 100% of their income by both New York and New Jersey. Although a credit would be allowed to offset some of this dual tax liability, the credit would not extend to the tax

on income from intangible assets. Therefore, petitioners allege that "[t]he imposition of a greater burden upon Petitioners because they are engaged in activity across state lines, as compared to a taxpayer who limits his or her activity to a single state, merely because the former has engaged in activity in more than one state, is a quintessential violation of the 'internal consistency' principle" (Petitioners' brief, p. 14).

Further, petitioners rely on section 3, Article XVI of the New York State Constitution as a bar to taxation of the intangible income of petitioners even though they meet the residency requirements of section 605(b)(1). Section 3 provides, generally, that (a) intangibles are deemed to be located at their owner's domicile unless they are employed in carrying on a business by the owner thereof in New York State; and (b) intangible personal property shall not be taxed ad valorem although the income therefrom may be taken into consideration in computing any excise tax measured by income generally. Therefore, petitioners argue that New York State may not constitutionally apply its personal income tax to taxpayers who are not domiciliaries and whose intangibles are not employed in business in New York.

The Division argues in opposition that this issue has previously been addressed by this Tribunal in Matter of Tamagni (Tax Appeals Tribunal, November 30, 1995) in which we held that, before deciding whether the New York statute violated the Commerce Clause, it was incumbent on the petitioners to demonstrate that they were engaged in interstate commerce. While petitioners argue that they have shown that in the present case, the Division argues that petitioners, having chosen to maintain a permanent place of abode in New York City and to work there, have failed to establish how they were engaged in interstate commerce. Further, petitioners have failed to show that they are being taxed twice on income earned from intangibles. The Division asserts that petitioners have not shown that any tax was actually paid to the State of New Jersey nor have they established the fact that any part of the income taxed by New York State involved income from intangibles.

In reply, petitioners argue that the Tribunal did not conclusively address the issue involved in the instant case in Tamagni nor was our decision there dispositive of the instant case. Petitioners argue that, in Tamagni, the question of the applicability of the Commerce Clause to the taxpayer's activities was raised by the Tribunal sua sponte and was not addressed by the parties. Petitioners argue that the definition of interstate commerce relied on by the Tribunal in Tamagni has been repudiated by the United States Supreme Court and that Court's position is that "any tax that affects interstate commerce - - - as a tax applied to one who crosses state lines to get to work surely does - - - must be evaluated under the Court's substantive Commerce Clause criteria regardless of what once may have been regarded as the limitations of the definition of 'commerce'" (Petitioners' reply brief, pp. 4-5). Petitioners argue that "personal interstate mobility is protected by the Commerce Clause and that state taxes or regulations affecting such mobility are subject to Commerce Clause scrutiny" (Petitioners' reply brief, p. 7). Petitioners argue that they incurred tax burdens as a result of their activity involving the crossing of state lines that they would not have incurred if they had worked and lived in the same state. The only reason they maintained an apartment in New York City, they argue, was because they had jobs which required their frequent presence late in the evening. The burden of double taxation did not prevent their employment across state lines but created an economic disincentive to cross state lines for employment and thus violated the Commerce Clause. This result pertains even if they have not shown that they were actually subject to double taxation. Petitioners do note, however, that double taxation, in fact, is not unconstitutional as long as each tax independently satisfies the internal consistency test. It is "not actual double taxation that makes a tax statute unconstitutional, but the risk of double taxation created by a tax statute's preference for local activities" (Petitioners' reply brief, p. 13).

We disagree with petitioners' arguments and affirm the determination of the Administrative Law Judge for the reasons set forth below:

a) Alleged Violation of the New York State Constitution

In applicable part, section 3 of Article XVI of the New York State Constitution provides as follows:

> "[m]oneys, credits, securities and other intangible personal property within the state not employed in carrying on any business therein by the owner shall be deemed to be located at the domicile of the owner for purposes of taxation, and, if held in trust, shall not be deemed to be located in this state for purposes of taxation because of the trustee being domiciled in this state . . . . Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally" (State Constitution, Article XVI, § 3).

As noted by the Division, the argument made by petitioners that New York State may not constitutionally apply its personal income tax to taxpayers who are not domiciliaries and whose intangibles are not employed in business in New York is nearly identical to the argument that was raised by the taxpayers in Matter of Tamagni (supra). We believe that our decision on that issue therein is dispositive of the argument raised in the present case. In Tamagni, we stated:

> "Petitioners' argument is premised on 'two propositions' which they assert 'emerge' from the language and legislative history of Article XVI, section 3 of the State Constitution. First, the language of the section is rooted in the common law concept of domicile, and that domicile is the controlling factor for determining the taxability of intangibles and the income therefrom. Second, that based on the legislative history of Article XVI, section 3, 'the protection afforded nondomiciliaries from taxation of their intangibles plainly extended beyond ad valorem taxes on intangible property and included other taxes relating to intangibles, notably taxes on the income therefrom' (Petitioners' brief, p. 50).
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> "Petitioners assert that: '[i]n light of these two propositions, the conclusion is inescapable that New York may not constitutionally apply its personal income tax to the taxpayers here who are not domiciliaries and whose intangibles are not employed in business in New York. The fact that Petitioners may satisfy the 183-day test for residency is beside the point' (Petitioners' brief, p. 51). Consequently, petitioners conclude that 'inasmuch as the Division of Tax Appeals lacks the authority to apply the Tax Law in an ad hoc amended manner, and since this Tribunal is not authorized to extend the credit provided by Section 620(a) to taxes paid to other jurisdictions on income from intangibles, the only solution in this case is to find that Section 605(b)(1) is unconstitutional under the New York State Constitution as applied to Petitioners' (Petitioners' brief, p. 52).
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> "We cannot agree. Petitioners do not explain how the taxation of residents on the income from intangibles is prohibited by Article XVI, section three. First, the plain language of the first sentence of the section merely provides that the situs of intangibles shall be deemed to be located at the domicile of the owner for purposes of taxation. It says nothing more.

Petitioners' emphasis on the concept of domicile as the controlling principle of permissible taxation under the section has no demonstrable basis in the history of the section. The Court of Appeals in Ampco Printing-Advertisers' Offset Corp. v. City of New York (14 NY2d 11, 247 NYS2d 865), had occasion to probe the history of Article XVI, section 3 in the context of allegations that the commercial rent occupancy tax levied by the City of New York violated the provision. As the Court stated:

> 'the Report of the Committee on Taxation which sponsored the provision at the convention discloses that it was designed to assure nonresidents that they could "keep their money and securities [in New York] without any fear that the established legislative policy [of nontaxability] will be changed" (Journal and Documents, N.Y.S. Const. Conv., 1938, Doc. No. 2, p. 3), and Senator Saxe, the chairman of that committee, declared (2 Revised Record, N.Y.S. Const. Conv., 1938, pp. 1113-1114): "It is a further assurance to the people of the whole United States that if they send intangibles into the State of New York they are not going to be subjected to ad valorem taxation"' (Ampco Printing-Advertisers' Offset Corp. v. City of New York, supra, 247 NYS2d 865, 871).

"Second, with regard to the second sentence of the section, the Ampco Court went on to point out that:

> 'the [commercial rent and occupancy] tax does not apply to mere ownership or possession [of the intangible in New York] . . . . A statement made by Senator Saxe at the Constitutional Convention -- in response to questions posed by another delegate -- serves to illumine the purpose of proposed section 3 of article XVI. After noting that the provision would not bar imposition of a stock transfer tax (2 Revised Record, op cit., pp. 1114-1115), Mr. Saxe went on to say (p. 1115): "we want to make it impossible for the Legislature itself, or for the Legislature to delegate the right, to levy an excise tax on the mere possession of the property. In other words, the property may enjoy that privilege or it may be used for some purpose, and then you can levy an excise tax on it if and when it is used"' (Ampco Printing-Advertisers' Offset Corp. v. City of New York, supra, 247 NYS2d 865, 871).

"There is no evidence in the record that intangibles of petitioners are being taxed due to their presence in this State nor is the tax on income earned from these intangibles an ad valorem tax on the intangibles themselves. Petitioners are being taxed not on the ownership of intangible assets but, as residents of the State of New York, on income generated by such intangible assets. Petitioners point to no authority that supports their extension of the language of Article XVI to income earned by nondomiciliary residents on such intangibles" (Matter of Tamagni, supra).

b) Alleged Violation of the Commerce Clause

First, we note that the taxpayer bears the burden of proving that a statute, as applied, is unconstitutional. As we stated in Matter of Brussel (supra):

> "[i]t is well established that the taxpayer has the burden to establish that a statute is unconstitutional on its face (see, Matter of Wiggins v. Town of Somers, 4 NY2d 215, 173 NYS2d 579; Matter of Maresca v. Cuomo, 64 NY2d 242, 485 NYS2d 724, appeal dismissed 474 US 802; Matter of Trump v. Chu, 65 NY2d 20, 489 NYS2d 455, appeal dismissed 474 US 915). We can see no reason why this rule does not apply with equal force when a taxpayer is challenging the constitutionality of a statute as applied."

The Commerce Clause of the Federal Constitution (Art I, § 8, cl 3) provides that Congress is vested with the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

A state tax affecting interstate commercial activity violates the Commerce Clause unless it "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State" (Complete Auto Transit v. Brady, 430 US 274, 279). "The first, and again obvious, component of fairness in an apportionment formula is what might be called internal consistency -- that is the formula must be such that, if applied by every jurisdiction, it would result in no more than all of the unitary business's income being taxed" (Container Corp. of Am. v. Franchise Tax Bd., supra at 169). It is the internal consistency component of the "fairness in apportionment" test which petitioners claim is violated by Tax Law § 605(b)(1)(B).

Petitioners argue that section 605(b)(1)(B) is not unconstitutional as applied to an individual who confines all of his or her activities to a single state or to an out-of-state domiciliary who is also a resident of New York and who has only earned income rather than income from intangibles. Nor do petitioners contest the concept that nonresidents must pay state income tax on amounts earned in New York State. The internal inconsistency of which petitioners complain allegedly arises because taxpayers such as petitioners who meet the definition of residents under New York State law may be subject to taxation in their state of domicile as well as in New York on income from intangibles.

In our decision in Matter of Tamagni (supra), we stated that:

> "[b]efore scrutinizing Tax Law § 605(b)(1)(B) under the Commerce Clause 'tests,' however, it is incumbent on petitioners to show that they are engaged in interstate commerce.
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> > "'Interstate commerce must be such as takes place between states, as differentiated from commerce wholly within a state. It must have reference to interstate trade or dealing; and if the regulation is not such, and comprehends only commerce which is internal, the state may legislate concerning it' (Ware & Leland v. Mobile County, 209 US 405, 409).
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> "As stated by the Supreme Court in Goldberg v. Sweet (488 US 252), '[i]t is not a purpose of the Commerce Clause to protect state residents from their own state taxes' (Goldberg v. Sweet, supra, at 266).
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> "The law review article relied on by petitioners ('Resident' Taxpayers: Internal Consistency, Due Process, and State Income Taxation, 91 Colum L Rev 119, 136) explores the possibility that 'some states' tax structures may violate the commerce clause when applied to individuals whose interstate travel constitutes interstate commerce.' However, applicability to the instant situation is premised on the author's unsupported conclusion that 'if a taxpayer lives in one state and travels to work in another state, this travel probably involves interstate commerce' ('Resident' Taxpayers: Internal Consistency, Due Process, and State Income Taxation, supra, at 136, emphasis added). Petitioners have not shown how their domicile in New Jersey and their statutory residence in New York State constitutes interstate commerce. As a result, petitioners have not met their burden of proof to show that Tax Law § 605(b)(1)(B), as applied to them, is unconstitutional because it violates the Commerce Clause of the United States Constitution" (Matter of Tamagni, supra).

Petitioners argue that the definition of interstate commerce relied on by the Tribunal in Tamagni has been repudiated by the United States Supreme Court. Furthermore, petitioners assert that any tax which affects interstate commerce (which, petitioners argue, a tax applied to one who crosses state lines to get to work surely does) must be evaluated under the Court's substantive Commerce Clause criteria. The linchpin of petitioners' arguments is the concept that there exists a greater tax burden on taxpayers simply because they continually travel back and forth from New Jersey to New York. Petitioners argue that "[t]he imposition of a greater burden upon Petitioners because they are engaged in activity across state lines, as compared to a taxpayer who limits his or her activity to a single state, merely because the former has engaged in activity in more than one state, is a quintessential violation of the 'internal consistency' principle" (Petitioners' brief, p. 14). However, New York State's resident income tax liability does not befall petitioners or similarly situated taxpayers because of their interstate travel to and

from work. In fact, if petitioners traveled every day from New Jersey to New York and returned to their home state at the close of the business day, without having the need to maintain a permanent place of abode in New York, they would not meet the criteria for being a resident of New York State.

The tax is levied on those who: a) maintain a permanent place of abode in this State; and b) are present in this State (and in New York City) for more than 183 days per year. In their brief, petitioners assert that they do not challenge the conclusion that they meet each of these criteria. Therefore, petitioners' taxable status as "residents" is premised not on their movement into and out of this State but because of their degree of permanency in this State. It is only those who establish themselves as residents of New York State who are taxed by this State on their earned income as well as their income from intangibles. In this regard, all New York State residents are taxed the same.

Since petitioners have alleged that the statute is unconstitutional as applied, they bear a heavy burden of demonstrating the validity of their claim. Petitioners point to no case law that holds that the maintenance of a permanent place of abode in more than one state in and of itself constitutes or affects interstate commerce. While petitioners argue that the tax tends to impede interstate mobility of workers and creates an economic disincentive to cross state lines for employment, there is no evidence of this in the record. In fact, the contrary conclusion may just as easily be surmised; i.e., that the tax encourages mobility because the tax may be lower when an individual does not maintain a permanent residence in New York State but simply commutes on a daily basis from home to work and back again.

As petitioners acknowledge, it is not double taxation that makes a tax statute unconstitutional, but the risk of double taxation created by a tax statute's preference for local activities. We do not believe that New York's tax scheme discriminates against out-of-state domiciliaries in violation of the Commerce Clause. Rather, it treats all those who qualify as New York State residents equally. Therefore, the exception of petitioners is denied.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Gayton and Pamela Ciccone is denied;

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

3. The petition of Gayton and Pamela Ciccone is denied; and

4. The Notice of Deficiency, dated December 3, 1992, is sustained.

DATED: Troy, New York
January 23, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner