

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RICHARD E. AND JEAN M. GRAY	:	DETERMINATION ON REMAND
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1987 and 1988.	:	DTA NO. 808982

Petitioners, Richard E. Gray and Jean M. Gray, 2 Railroad Vine, Amelia Island, Florida 32034, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1987 and 1988.

A hearing was held before Jean Corigliano, Administrative Law Judge, on September 9, 1992, and all briefs were filed by February 23, 1993. Petitioners appeared by Kaye, Scholer, Fierman, Hays and Handler (Peter L. Faber, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

On May 27, 1993, the Administrative Law Judge issued a determination holding that petitioners were residents of New York State until September 15, 1987 but were not residents of New York after that date. Both parties filed exceptions to the determination with the Tax Appeals Tribunal.

On June 30, 1994, the Tax Appeals Tribunal issued a Decision affirming that part of the determination which held that petitioners were not residents of New York "for the calendar year 1988" (Matter of Gray, Tax Appeals Tribunal, June 30, 1994). The Tribunal also found that the determination of the Administrative Law Judge misquoted a portion of the transcript in the Findings of Fact. The matter was remanded to the Administrative Law Judge "for a supplemental determination based on a corrected reading of the transcript on the issue of whether petitioners changed their domicile for the year 1987" (id.).

Petitioners requested and were granted the opportunity to file a brief on remand.

Petitioners filed a brief on July 27, 1994 and the Division of Taxation filed a reply on August 19, 1994.

For ease of reference, the full Findings of Fact found in the original determination are set forth below. Finding of Fact "22" has been modified to accurately reflect the record. An additional Finding of Fact is made as noted.

ISSUE

Whether petitioners were domiciled in New York in 1987.

FINDINGS OF FACT

Petitioners, Richard E. Gray and Jean M. Gray, were domiciled in New York State until at least September 1985.

In 1987 and 1988, petitioners filed New York State nonresident personal income tax returns. The returns filed for those years show Florida State mailing addresses. Upon audit of those returns, the Division of Taxation ("Division") determined that petitioners were domiciliaries of New York in 1987 and 1988; therefore, they were required by the Division to file personal income tax returns as residents of New York, calculating their income tax accordingly. The Division issued statements of audit adjustment to petitioners recalculating their 1987 and 1988 New York income and tax due thereon in accordance with this determination.

Based on the results of its audit, the Division issued to petitioners a Notice of Deficiency dated November 26, 1990, asserting deficiencies in income tax in the amounts of \$779,360.50 for 1987 and \$60,400.13 for 1988.

As a child, Mr. Gray moved with his family to Fayetteville, New York and later moved to Syracuse. Except for periods of schooling and military service, he lived in the Syracuse area most of his life. He is a graduate of Syracuse University and an avid supporter of the Syracuse football team. In 1952, Mr. Gray went to work for a company started by his father called Gray-Syracuse, Inc.

Gray-Syracuse is a precision casting corporation which focuses primarily on the

aerospace industry. Before 1985, Mr. Gray owned 80 percent of the common stock and was the chairman of the board of Gray-Syracuse. The remainder of the stock was owned by key employees hired by Mr. Gray to run the corporation. The corporation has manufacturing facilities in Manlius and Chittenango, New York. It also acquired two industrial plants, one in Troy and one in Oriskany, New York. Mr. Gray personally owned the property upon which Gray-Syracuse's primary facilities were located. He also purchased 48 acres of land as a site for a proposed manufacturing plant. The land was never zoned for industrial purposes, however, so the plant was never built. It remains vacant land and is still held by Mr. Gray.

In about 1970, Mr. Gray began relinquishing direct control over the operations of the corporation, appointing Robert Barbero as president. Over time, he handed over the day-to-day management of the corporation to Mr. Barbero. As his participation in the corporation declined so did his compensation until Mr. Gray was compensated less for his services than was Mr. Barbero. In the 1970's, Mr. Gray rented a separate office for himself in Manlius, New York to remove himself from the plant premises because he believed his presence would undermine Mr. Barbero's authority. In his personal office, he conducted business connected with Gray-Syracuse and with two other corporations in which he had an ownership interest: Alcumet, Inc., a New Hampshire foundry specializing in aluminum and copper base metal, and Finite Tools, a tool company formed in Georgia in 1983.

Mr. Gray has suffered severe health problems for some time, especially respiratory and heart ailments. In 1981, he was diagnosed as having arrhythmia, a heart condition which can cause sudden blackouts and, if untreated, can lead to death. In May 1981 he was involved in a minor automobile accident after falling unconscious behind the wheel. After that, he continued to experience episodes of lightheadedness. In June 1983, he experienced a loss of consciousness while sitting at his office desk. Because of these experiences, Mr. Gray stopped driving an automobile for a period of about five years.

Also in 1981, Mr. and Mrs. Gray were involved in an almost fatal automobile accident while driving from Sacramento to San Francisco. Following this accident, key employees of

Gray-Syracuse approached Mr. Gray and asked him what would happen to them in the event of Mr. Gray's death. Prompted by concerns for his own health and for the well-being of his employees, Mr. Gray began planning for retirement and for the orderly transition of the corporation to new ownership.

In the early 1980's, the Grays began visiting different locations looking for a place with a suitable climate that would allow Mr. Gray to exercise year round. They visited California, New Mexico, North and South Carolina, Georgia and Florida. Initially, they decided to settle on Skidway Island in Georgia. In January 1984, they purchased a residential plot with the intention of building a home there; however, their home design was rejected by the local architectural review committee. By August of 1985, the Grays realized that they would need to rent housing until they were able to resolve their differences with the review committee. They elected to rent on Amelia Island, Florida because there is a major airport nearby which would allow them to commute to Skidway Island on a regular basis to negotiate their differences with the review committee.

In August 1985, Mrs. Gray met with George Dahl, a realtor, who showed her available housing on Amelia Island. Eventually, they settled on a three-bedroom condominium located at 2201 Linkside Villa, Amelia Island. They executed a one-year lease from November 1985 through November 1986 with an option to renew. At some point in the fall of 1985, petitioners realized that they would never resolve their differences with the architectural review board of Skidway Island, and they then began searching for a permanent residence on Amelia Island.

Letters from two realtors confirm that by the fall of 1985 petitioners began looking for a home to purchase on Amelia Island. By the fall of 1986, the Grays still had not found what they were looking for. On October 3, 1986, the Grays signed an agreement to acquire Lot No. 44, Railroad Vine, Amelia Island Plantation, with the intention of building a new home. The acquisition of Lot No. 44 was completed on November 4, 1986, and the Grays immediately began planning for the design of the new house.

In the meantime, the Grays continued to rent housing on Amelia Island. When the lease

at Linkside ended, they did not exercise the option to renew because of a disagreement with the owner of the property. Instead, they leased a second three-bedroom condominium at 2095 Beachwood, Amelia Island Plantation from December 1986 through May 1987. The term was for less than a year because the owner had a prior arrangement to rent it to other tenants.

The Grays spent the summer of 1987 in Syracuse, New York and leased no property in Florida from June through September 15, 1987. They leased a three-bedroom apartment at 22 Wax Myrtle, Amelia Island Plantation from September 15, 1987 through October 1988. The Grays spent the summer of 1988 in Florida. Mr. Gray found the Florida heat and humidity to be extremely oppressive and determined not to repeat the experience.

The design, planning and construction of the Grays' new house stretched from November 1986 through at least December 1988. The original architectural design was rejected by the Amelia Island Plantation Architectural Review Board in December 1986 and had to be revised. The final plans were not approved until June 1987. The construction contract was then let out for bid. A final contract was signed in October 1987. The Grays actively participated in overseeing the design and construction of their new home. They moved into their new residence on December 15, 1988, although the house was only partially complete and swaddled in scaffolding.

When the Grays began planning to move to a warmer climate, they initially thought they would sell their Fayetteville home. They changed their minds for two reasons. One of their children was (and continues to be) unable to keep a steady job because of physical ailments and addictions to drugs. The Grays felt obligated to maintain a home for her, at least until she was able to care for herself. In addition, the Grays decided, as part of their estate planning, that it would be prudent to turn the Fayetteville house over to their children, allowing them to hold it as an investment.

The Grays have five children. Mr. Gray has three children by a prior marriage: Christina, who lives near Syracuse; Stephen who lives in Colorado; and Andrea, who lives in Vermont. Mrs. Gray has two children, also by a prior marriage, Warren and Susan Murphy.

Only Susan remains in Syracuse. Late in 1986, legal preparations were begun to effectuate the transfer of the Fayetteville house to the five children. On January 26, 1987, the children formed the partnership Gra-Mur Real Estate Co. ("Gra-Mur"). At that time, the home was valued at approximately \$240,000.00. In February 1987, the Grays gave each child an 8-1/3 percent interest in the Fayetteville house. They gave an additional eight and one-third percent interest to each child in November 1988. The remaining interest was transferred to the children in May 1989. The Grays elected to transfer the property to their children in this manner in order to take advantage of Federal and New York State gift tax exemptions. Had they transferred the property without thought to the tax consequences, they would have transferred the property to their children all at once.

The Grays rented (and continue to rent) the Fayetteville house from Gra-Mur on a year-round basis. They do so in order to provide themselves with a summer home away from the oppressive Florida heat. During part of the period in issue, the Grays also provided year-round housing for one of their daughters.

The Fayetteville house was appraised again in March 1987 and had a value at that time of approximately \$300,000.00. It has approximately 3,200 square feet. It is furnished with rather heavy antique furniture, appropriate to a northern climate. When the Grays moved to their newly-built house in Florida, they purchased all new furniture suitable for the Florida climate and the style of the new house. The Florida house has approximately 3,400 square feet. Glass windows are used throughout the structure, including ceilings and walls, and there are extensive plantings. Construction costs were approximately \$619,000.00.

In 1981, when he first began thinking about retirement, Mr. Gray entertained several plans for extricating himself from Gray-Syracuse. He initially considered having his son, Stephen Gray, assume ownership and management control of the corporation. When Stephen expressed no interest, Mr. Gray considered a sale to the employees through a stock option plan, but this proved not to be feasible. Finally, Mr. Gray considered a sale to third-party buyers.

In about 1984, Mr. Gray retained the Geneva Corporation, a business consulting firm, to

establish a price for the business and later that year he consulted the firm of Peat, Marwick & Mitchell about his plans. Mr. Gray had definite ideas about the type of purchaser he was looking for. He was interested in finding a company that would share his views as to how the corporation would be managed. It was important to him that the corporation not be merged into another business, that it remain in New York State and that his key employees be offered the opportunity to purchase stock. Mr. Gray was approached by many companies interested in purchasing including, Steele Heddle, Waukesha Foundry, Chromalloy, and Sturm Ruger.

In late 1986, ESCO Corporation ("ESCO"), a Portland, Oregon corporation, expressed an interest in purchasing Mr. Gray's interest in Gray-Syracuse. Serious negotiations were begun late in 1986 after Mr. Gray determined that ESCO would be a suitable buyer. On August 12, 1987, Mr. Gray announced to the employees that ESCO was going to purchase Gray-Syracuse by September 15, 1987. Mr. Gray agreed to sell to ESCO his 80 percent stock ownership in the corporation and the real property and manufacturing facilities owned by him. He hoped that 20 percent of the common stock would continue to be owned by the corporation's key personnel. Towards that end, Mr. Gray retained some of his holdings until other key employees became eligible to be shareholders. The shares retained by Mr. Gray were intended to create a pool from which key personnel could purchase shares, with ESCO always retaining 80 percent of the outstanding common stock. Some Gray-Syracuse employees elected to sell shares of stock they already owned, and in the end, Mr. Gray retained eight or nine percent of the common stock as a minority shareholder. Mr. Gray was asked by ESCO to serve on the Gray-Syracuse board of directors, and he did so without compensation until sometime in 1990.

Although Mr. Gray was not actively involved in the day-to-day management of Gray-Syracuse, he participated in running the corporation up until its sale in September 1987. As he stated:

A. "That is correct. However, I would say we were talking '84 and '85; I was still the responsible executive for Gray-Syracuse. Even though I was not operating the business on a daily basis, I was the motivator of the business; I was the extender of the business; I was the one that took the comparable risks and had my house and everything else on the line to buy equipment and build buildings and all of that stuff. So I was deeply, deeply involved, but not on an operating level. So

therefore, in the time frame of until 1987, I had to maintain bank relations and relations within the business community of Syracuse; it was vital to the health of the company.

"I was telling them at noon that in 19-- what year was it? -- 1950 we could set up one man to melt metal for \$15,000. Just before I left, one man to melt and pour metal was a million and a half dollars. And therefore, it was very vital that I have the resources to go out and get the money to buy the equipment to keep that business technically advanced."

Q. "And that would be through the sale in September of 1987?"

A. "Up until the sale in September of 1987."
(Tr., pp. 139-140).¹

In 1987, Mr. Gray received salary and wages from Gray-Syracuse in the amount of \$160,994.57. In 1988, he received wages and salary from Gray-Syracuse in the amount of \$59,790.00. Mr. Gray described this as a bonus earned in 1987 but paid in 1988. The wage and tax statements issued to Mr. Gray show a Florida address, and he credibly testified that he sometimes conducted business related to Gray-Syracuse from his residence in Florida.

Throughout 1987 and 1988, Mr. Gray retained his office in Manlius, New York, where he conducted business in connection with Alcumet and Finite Tools and looked after his personal financial interests. Until Gray-Syracuse was sold in 1987, he also conducted business on behalf of that corporation from the Manlius office.

As a life-long resident of the Syracuse area and a successful businessman, Mr. Gray had extensive business, social and civic ties in the Syracuse community. He was the treasurer of the Manufacturers Association of Central New York for approximately 10 years and also served as president of that organization. He was a member and past president of the Citizen's Foundation

1

Finding of Fact "22" of the original Determination included only a portion of this quoted passage and omitted the word "until", as highlighted above. The quotation appearing in original Finding of Fact "22" was as follows:

"I was deeply, deeply involved, but not on an operating level. So therefore, in the time frame of 1987, I had to maintain bank relations and relations within the business community of Syracuse; it was vital to the health of the company.' (Tr., p. 140.)"

and a member of the Metropolitan Development Association and the Employer's Support for the Guard and Reserve. By the end of 1986, Mr. Gray

had resigned from all of these organizations. He rejected invitations to serve on the boards of several community organizations in New York because he knew that he was moving to Florida. In 1987 and 1988, Mr. and Mrs. Gray continued their memberships in two Syracuse social organizations, the Onondaga Golf Club and the Century Club. In addition, Mr. Gray continued his membership in the Orange Pack, an organization for boosters of the Syracuse University football team.

Beginning in 1985, Mr. and Mrs. Gray's pattern of charitable contributions shifted from New York to Florida. In 1985, the Grays made no contributions to Florida charitable organizations, while making substantial donations to organizations in New York and elsewhere. By 1988, the Grays' New York contributions were confined primarily to Syracuse University and the Orange Pack. The bulk of their charitable contributions were made to Florida organizations. Mrs. Gray became a member of St. Michael's, a Florida church, in 1985 and began making contributions to that church in 1986. In 1986, the Grays began contributing to the United Way of Northeast Florida, and by 1988 they were contributing to six different Florida organizations.

On September 9, 1985, Mr. Gray executed a Declaration of Domicile and Citizenship in Nassau County, Florida, stating, in part:

"I have changed my domicile to and am . . . a bonafide resident of the State of Florida since NINTH day of SEPTEMBER, 1985, and I reside at 2201 BEACHWOOD ROAD, FERNANDINA, NASSAU County, Florida"

Mrs. Gray registered a motor vehicle in Florida on November 26, 1985. Both of the Grays were issued Florida driver's licenses on November 27, 1985. The Grays registered to vote in Florida on February 20, 1986. By separate letters dated March 11, 1986, Mr. and Mrs. Gray requested that the Onondaga, New York Board of Elections remove their names from the voter records. On March 10, 1986, Mr. Gray executed a living will declaring the Fernandina

address as his residence. A Florida Vessel Certificate of Title was issued to Jean M. Gray on October 7, 1988. Mr. and Mrs. Gray obtained passports issued in Miami on December 4, 1986.

In the years after 1986, the Grays joined several Florida organizations. Mrs. Gray joined the Plantation Ladies Association in 1986, and Mr. and Mrs. Gray became members of the Pelican Club of Fernandina Beach, Florida early in 1987. Mr. Gray has been an active member of a discussion group called The Breakfast Club since October of 1985. Membership in the group is limited to 25 men who must be permanent residents of Amelia Island, Florida in order to participate. In June 1988, the Grays joined the Council of 100 in Nassau County, Florida, a group dedicated to establishing and supporting an active Republican Party in that part of Florida. The Grays renewed their membership in a Florida branch of the American Automobile Association in June 1987, indicating that they were members before that time.

Beginning in March 1986, Mr. Gray began writing to Florida elected officials on both the state and Federal level to communicate his opinion with regard to issues of concern to him. He consistently identified himself as a Florida resident.

The Grays started seeing a Florida dentist in 1986. Beginning in 1987, they also established ties with Florida doctors. All of their medical records were transferred to Dr. Farid Ullah of Fernandina Beach, Florida in 1987. Mr. Gray consulted with an athletic physician when he was in New York in 1986, but he has not returned to New York for medical treatment of his heart condition since before 1987. The Grays still maintain a relationship with a doctor in Syracuse.

In September 1985, Mr. Gray opened a brokerage account at Merrill Lynch's Fernandina Branch. In November 1985, he opened a checking account with the Barnett Bank of Florida with an initial deposit of \$10,000.00. Shortly thereafter, he obtained a Visa card from the Fernandina Branch of the Barnett Bank. Throughout 1987 and the greater part of 1988, Mr. Gray also maintained accounts with Prudential-Bache of Syracuse and the Seneca Federal Savings and Loan Association of Manlius, New York. He also had brokerage accounts with Wright Investors' Service of Bridgeport, Connecticut, Bear Stearns of New York and New

Mexico Capital Management in Albuquerque, New Mexico. He had investments in limited partnerships located in Salt Lake City, Utah.

Mr. Gray continues to own a 48-acre parcel in the Syracuse area which he purchased with the thought of someday building a manufacturing plant. Mrs. Gray has a first mortgage on a house located in the Syracuse area originally owned by herself and her former husband.

By Mr. Gray's count, the Grays spent 183 days in Florida and 145 days in New York in 1987; in 1988, they spent 266 days in Florida and 67 days in New York. Days in and out of New York were substantiated by voluminous records including: telephone bills, credit card receipts, bank withdrawal receipts, doctor and dentist bills, Amelia Island Plantation Club charges and expense accounts. In addition, Mr. Gray offered in evidence a contemporaneous log showing his whereabouts on a daily basis. Mr. Gray completed the log, usually on a weekly basis, although some entries are made daily and some every few days. Mr. Gray credibly testified as to his whereabouts on days not accounted for by documentation other than the log. Primarily, these were days spent in Florida, and documentary evidence was offered to establish the Grays' presence in Florida on the day immediately preceding and the day following the day for which testimony was offered.

The Grays spent more time in New York in 1987 than they would have liked. One of their daughters had legal and medical problems which forced the Grays to return to Syracuse on several occasions.

Sometime in December of 1983 or January of 1984, the Grays consulted with their attorney regarding the appropriate steps to take to carry out their intention to change their domicile from New York. At that time, they intended to change their domicile to Georgia. When they moved to Amelia Island, they were prepared to execute formal declarations in order to change their domicile to Florida, and they did so.

ADDITIONAL FINDING OF FACT

Mr. Gray was Chairman of the Board of Directors of Gray-Syracuse until that company was sold. In that capacity, he attended meetings of the Board of Directors on March 31, 1987

(conducted by telephone), July 2, 1987 and August 28, 1987.

CONCLUSIONS OF LAW

A. On exception to the Tax Appeals Tribunal, petitioners argued that when Mr. Gray's testimony was read in its entirety it showed that he was deeply involved in Gray-Syracuse until 1987 and not during 1987. The Tribunal found that the Administrative Law Judge misquoted the transcript and remanded the matter for a supplemental determination. The issue to be considered by the Administrative Law Judge, as stated by the Tribunal, is both narrow and precise -- "whether the Administrative Law Judge would find credible the meaning ascribed to the misquoted statement by petitioners, i.e., that 'Mr. Gray was referring to a period of time before 1987.'"

In their brief on remand, petitioners appear to acknowledge that Mr. Gray's testimony referred to the period up to September 1987. When the entire passage is considered as a whole, there can be no doubt that this is the case. However, petitioners contend that Mr. Gray was only testifying about the need of the corporation for capital and his role as the majority stockholder of Gray-Syracuse in ensuring that capital would be available if needed. Petitioners contend that an accurate reading of the testimony that prompted this remand indicates that Mr. Gray was stating that he terminated his active involvement in the operation of Gray-Syracuse well before January 1987 and that his active involvement in financing the business ended before 1987. It is petitioners' contention that in 1987 Mr. Gray functioned only as a stockholder protecting his investment. They assert that when the misquoted sentence is read in the context of the entire passage, it shows that "Mr. Gray was merely testifying that his resources were available to the Corporation for this purpose if needed during 1987" (Petitioners' brief on remand, p. 5). Petitioners characterize Mr. Gray's role as that of a shareholder and not as an employee or manager. It is the Division's position that the record contains substantial evidence that Mr. Gray was actively involved in the business affairs of Gray-Syracuse until its sale in September 1987.

B. Upon review of the entire record, including the misquoted passage of Mr. Gray's testimony, I conclude that petitioners have not demonstrated that their change of domicile

occurred before September 15, 1987. Mr. Gray had a substantial proprietary interest in Gray-Syracuse, holding 80 percent of the stock until its sale in September 1987; he had significant responsibilities as a director and chairman of the board of Gray-Syracuse; and he received substantial compensation for his efforts, earning \$160,994.57 in 1987 and a bonus of \$59,790.00 which was paid in 1988, although earned in 1987. These facts show that Mr. Gray's role in Gray-Syracuse was more than that of a passive investor. I do not find it significant that Mr. Gray's role in Gray-Syracuse was that of a director and majority shareholder rather than a manager or chief operating officer. What is significant is that he maintained a substantial tie to New York through his activities with Gray-Syracuse.

The original determination points to other factors which weigh against petitioners' claim of a change of domicile before 1987. They will not be repeated here, except to note that although Mr. Gray's business and financial ties to Gray-Syracuse were considered a significant factor in determining the domicile issue, they were not the only facts supporting the determination that petitioners did not effect a change of domicile from New York to Florida until sometime in the fall of 1987.

C. The petition of Richard E. Gray and Jean M. Gray is granted to the extent that it is held that they were not resident individuals of New York State after September 15, 1987; the tax deficiency computed by the Division for the year ended December 31, 1987 shall be recalculated accordingly.

DATED: Troy, New York
September 15, 1994

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE