

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petitions                                                                                                                                                                                                                  | : |                               |
| of                                                                                                                                                                                                                                              | : |                               |
| <b>ARFA B. AHMED</b>                                                                                                                                                                                                                            | : | SMALL CLAIMS<br>DETERMINATION |
| for Redetermination of Deficiencies or for Refund of<br>New York State and New York City Personal Income<br>Taxes under Article 22 of the Tax Law and the<br>Administrative Code of the City of New York for the<br>Years 2000, 2001, and 2002. | : | DTA NOS. 820251<br>AND 820260 |
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Petitioner, Arfa B. Ahmed, 300 East 85<sup>th</sup> Street, # 2503, New York, New York 10028, filed petitions for redetermination of deficiencies or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2000, 2001, and 2002.

A small claims hearing was held before Timothy J. Alston, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on September 15, 2005 at 10:30 A.M., which date began the three-month period for the issuance of this determination. Petitioner appeared by Carl E. Stoops, CPA. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Susan Parker).

***ISSUE***

Whether petitioner maintained a permanent place of abode in New York State and New York City for the years 2000, 2001 and 2002 within the meaning of Tax Law § 605(b)(1)(B) and Administrative Code of the City of New York § 1305(b).

***FINDINGS OF FACT***

1. Petitioner, Arfa B. Ahmed, is a citizen of Pakistan.
2. Petitioner came to the United States in 1995 on an F-1 student visa to pursue an MBA at the University of North Carolina at Chapel Hill. Petitioner received his MBA from North Carolina in 1997.
3. In June 1997, petitioner commenced employment with ABN AMRO, Inc., in New York City, under authority of a one-year practical training extension of his F-1 student visa. In May 1998, petitioner was granted H-1B visa status through April 11, 2001, and he continued working for ABN AMRO. In 2001 petitioner received an extension of his H-1B visa status effective April 12, 2001 through March 21, 2004, while continuing to work for ABN AMRO in New York.
4. ABN AMRO, Inc. is an investment banking firm. Its corporate parent, ABN AMRO Bank, N.V., is a multinational banking corporation headquartered in Amsterdam, The Netherlands. ABN AMRO Bank has offices in 76 countries.
5. Petitioner was first employed by ABN AMRO in June 1997 as a research assistant. In that capacity he identified, analyzed and presented investment opportunities in the Asian markets to ABN AMRO clients in North America using proprietary research and financial models. He also tailored, synthesized and presented research for specific client investment needs and coordinated research and sales efforts between Asian offices and the New York sales office to sell and distribute Asian equity, debt and derivative securities to institutional investors in the United States and Canada.
6. In 2001, petitioner was promoted to vice president, Asian Equities - Institutional, in ABN AMRO's New York office. In a letter dated February 15, 2001, to the Immigration and

Naturalization Service in support of an extension of petitioner's H-1B visa status, Gema Charvet, ABN AMRO's assistant vice president, described petitioner's new position as follows:

In this capacity Mr. Ahmed will research sales focusing on Asian equities and country funds to North American institutional investors. He will be responsible for covering the markets of Hong Kong, China, Singapore, Taiwan, Korea, Thailand, Malaysia, Indonesia, the Philippines, and Pakistan. Mr. Ahmed will cover a diverse range of accounts including proprietary trading desks, hedge funds, relative value investors, arbitrage traders, life insurance companies, pension funds and general institutional investors. He will prepare customized investment proposals and presentations for institutional equity investors and generate computer-aided models for identifying arbitrage opportunities in financial markets. Mr. Ahmed will work with any clients who have queries relating to Asian financial products including equities, convertible bonds, derivative instruments, and fixed income securities. Finally, he will prepare business drafts for client accounts with target revenue and votes numbers. This will include drafting execution plans and implementing them to achieve the yearly targets.

7. Petitioner filed New York nonresident returns beginning with the tax year 1997 and continuing through the years at issue. He maintained a residence in New York City throughout the same period.

8. Petitioner has continued to work for ABN AMRO through (at least) 2004 and has continued to reside in New York City. There is no evidence in the record as to his visa status after March 21, 2004. Petitioner filed New York resident returns in 2003 and 2004.

9. On or about July 22, 2003, the Division of Taxation ("Division") mailed a letter advising petitioner that his New York State tax returns for the years 2000 and 2001 were under review. The letter asked petitioner to supply a statement detailing his work assignment with ABN AMRO, Inc., a copy of his employment agreement with ABN AMRO, Inc., and a statement regarding his visa status along with a copy of his visa. The Division explained that it needed the information in order to establish that petitioner's residence in New York was

temporary, for a fixed and limited period of time and for the accomplishment of a particular purpose.

10. In response, petitioner provided, among other things, letters dated August 6, 2003 and November 4, 2003 from Alasdair Clynes, ABN AMRO's Managing Director, Asian Equities - New York. The August 6 letter from Mr. Clynes states, in part:

Mr. Ahmed has been hired by ABN AMRO to work in Asian Equities Division on an H-1B visa till March '04. The primary goal of his employment during this time is to establish and develop ABN AMRO's Asian Equities business in North America and complete the equity placements for the largest bank in Indonesia and the largest telecom firms in Singapore. . . Mr. Ahmed was hired . . . as part of the bank's drive to expand ABN AMRO's international business in North America. Mr. Ahmed was hired for this defined time period based upon his international background and experience . . . .

11. Mr. Clynes' November 4 letter states, in part:

Mr. Ahmed has been hired by ABN AMRO in Asian Equities Division on temporary work visa till March '04, not for an indefinite duration. His specific assignment is to work on the privatization and sale of one of the largest state owned power utilities in Indonesia. The privatization is expected to be completed in the next few months.

12. Petitioner did not submit any employment contract with ABN AMRO.

13. Following a review of the information provided by petitioner, the Division concluded that petitioner's stay in New York was not "temporary" within the meaning of the relevant statutes and regulations. The Division thus found that petitioner's residence in New York during the years at issue constituted a permanent place of abode. Accordingly, the Division determined that petitioner was properly subject to tax as a resident of the City and State of New York.

14. On the basis of the forgoing conclusions, the Division issued two notices of deficiency to petitioner dated January 5, 2004 which asserted additional New York State and New York

City personal income tax due for the years 2000 and 2001 in the respective amounts of \$16,530.01 and \$17,683.74, plus interest.

15. On the basis of the same conclusions the Division recomputed petitioner's 2002 New York State and New York City income tax liability. Petitioner's 2002 nonresident return claimed a State and City income tax refund of \$12,697.00. On October 6, 2003 the Division issued to petitioner a Statement of Tax Refund advising that its recomputation of petitioner's return resulted in a refund of \$2,000.50 for the year 2002.

16. Petitioner offered neither testimony nor affidavits in support of his position.

17. The parties agree that petitioner was not domiciled in New York during the years at issue. The parties further agree that petitioner was present in New York State and City for more than 183 days during each of the years at issue.

### ***CONCLUSIONS OF LAW***

A. The issue in this proceeding is whether petitioner is subject to tax as a resident of New York State and New York City. The classification is significant because nonresidents are taxed only on their New York State and New York City source income whereas residents are taxed on their income from all sources (Tax Law §§ 611, 631). To the extent pertinent to this matter, Tax Law § 605(b)(1)(B) defines a resident individual as one:<sup>1</sup>

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, unless such individual is in active service in the armed forces of the United States.

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<sup>1</sup> The definition of a New York City resident is identical to the New York State definition of a New York State resident except for substituting the word "City" for "State" (New York City Administrative Code § 11-1705[b][1][B]).

B. Here, the parties agree that petitioner was not domiciled in New York during the years at issue. The parties further agree that petitioner was present in New York State and City for more than 183 days during each of the years at issue. Also there is no question that petitioner maintained a place of abode in New York City during the years at issue. Consequently, the only issue remaining is whether petitioner maintained a *permanent* place of abode in New York City.

The term “permanent place of abode” is not defined in the Tax Law. However, it is discussed in the regulations. As to the question of permanency, the Commissioner’s regulations provide that “a place of abode . . . is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose” (20 NYCRR 102[6][e]). Accordingly, if a place of abode is to be deemed not permanent, as petitioner contends, it must be maintained during a temporary stay *and* the stay must be for the accomplishment of a particular purpose.

C. Petitioner has failed to meet his burden of proof imposed under Tax Law § 689(e) to show that his stay in New York City was temporary and for the accomplishment of a particular purpose. Accordingly, the notices of deficiency and the Statement of Tax Refund must be sustained.

The description of petitioner’s myriad duties as vice president as set forth in the February 15, 2001 letter of Gema Charvet to the Immigration and Naturalization Service (*see*, Finding of Fact “6”) is, frankly, the antithesis of employment for the accomplishment of a particular purpose. Additionally, petitioner’s promotion from research assistant to vice president is suggestive of a career at ABN AMRO and thus weighs against petitioner’s claim that his stay in New York was temporary and for a particular purpose. Finally, in the absence of any employment contract in the record it is concluded that petitioner was employed at will, which

also suggests that his stay in New York was of indefinite duration and was neither temporary nor for the accomplishment of a particular purpose.

D. The letters of Mr. Clynes which assert that petitioner's employment was temporary are unconvincing. There is neither testimony nor affidavits in the record to support this claim, which is inconsistent with the job description set forth in the February 15, 2001 letter of Gema Charvet.

E. At hearing, petitioner's representative noted petitioner's high level of education and expertise in a highly specialized area in support of petitioner's position. While apparently necessary to qualify for an H-1B visa (*see*, 8 Code of Federal Regulations ["CFR"] 214.2[h][1][ii][B]), petitioner's undisputed education and expertise are insufficient to establish temporary status under the Division's regulations.

F. Petitioner's representative also noted that H-1B visa status is for workers "temporarily in the United States" (8 CFR 214.2[h][1][ii][B]). Petitioner's representative submitted information obtained from the United States Department of State website indicating that an H-1B visa holder may remain in the United States for up to six years. At that point the alien must remain outside the United States for one year before another H-1B visa can be approved. An H-1B visa holder may also apply for and be granted permanent resident status.

While these immigration rules and regulations may support petitioner's claim that his stay in New York was temporary, they clearly are not dispositive. In this case, the evidence in the record indicating that petitioner's stay was indefinite and not for the accomplishment of a particular purpose compels the conclusion that petitioner failed to meet his burden of proof. Moreover, even assuming that petitioner's stay was temporary, in order to establish that he was taxable as a nonresident, as noted previously, petitioner also had to show that his stay was for the

accomplishment of a particular purpose. As discussed above, petitioner has failed to make such a showing.

G. The petitions of Arfa B. Ahmed are denied and the notices of deficiency dated January 5, 2004 and the Statement of Tax Refund dated October 6, 2003 are sustained, together with such interest as may be lawfully due.

DATED: Troy, New York  
November 23, 2005

/s/ Timothy J. Alston  
PRESIDING OFFICER