STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ADAM PRITCHARD	:	SMALL CLAIMS DETERMINATION DTA NO. 820801
for Redetermination of Deficiencies or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Years 2000 and 2001.	:	

Petitioner, Adam Pritchard, 239 East 79th Street, Apt. #15G, New York, New York 10021-0816, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the years 2000 and 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York, on May 24, 2006 at 2:45 P.M. Petitioner appeared by Robert Upbin, CPA. The Division of Taxation appeared by Mark F. Volk, Esq. (Mac Wyzomirski).

The final brief in this matter was due by August 11, 2006 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioner, although not domiciled in New York State and New York City, is nonetheless taxable as a resident individual on the basis that he maintained a permanent place of

abode in New York State and New York City and spent more than 183 days during each year in the State and City.

FINDINGS OF FACT

1. There is no dispute in the instant matter that petitioner, Adam Pritchard, was not domiciled within the State and City of New York for all of 2000 and from January 1, 2001 to August 11, 2001. There is also no dispute that petitioner maintained a place of abode in New York City for all of 2000 and 2001 and that he spent more than 183 days during each year within the State and City of New York. The only issue to address in this proceeding is whether petitioner's place of abode constituted a permanent place of abode as contemplated in Tax Law § 605(b)(1)(B) and 20 NYCRR 105.20(e)(1).

2. Petitioner was born in the United Kingdom on September 27, 1970 and to this day he remains a citizen of the United Kingdom. Petitioner was educated in the United Kingdom, ultimately obtaining a Bachelor's Degree in Physics from the University of London in 1992, just prior to his 22nd birthday.

3. In August 1992, petitioner came to the United States under a valid F-1 student visa to study for a Master's Degree at Columbia University in New York City. Petitioner completed his studies at Columbia University in the spring of 1994, obtaining a Master's Degree in Physics.

4. After graduating from Columbia University petitioner accepted employment as a physics and computer science teacher at the Dominican Academy in New York City. Petitioner's employment at the Dominican Academy was pursuant to a one-year contract which was renewed on a yearly basis. Petitioner remained employed at the Dominican Academy for three years, until June 30, 1997, at which time he accepted employment with Goldman, Sachs & Co., a global investment and securities firm headquartered in New York City.

5. For the first year that petitioner taught at the Dominican Academy (September 1994 to June 1995) he did so under his F-1 student visa which permitted him to stay in the United States for one year post-graduation for practical training. After petitioner's F-1 student visa expired he obtained an H-1B nonimmigrant worker visa from the U.S. Department of Justice, Immigration and Naturalization Service ("INS"). Petitioner's first H-1B visa was effective on or about July 19, 1995 and was valid for the standard three-year period. The Dominican Academy was the sponsoring employer for petitioner's first H-1B visa.

6. Once petitioner accepted employment with Goldman, Sachs & Co., it was, as the sponsoring employer, required to file a new application with the INS for petitioner to obtain a new H-1B visa. INS issued a new H-1B visa to petitioner for his employment with Goldman, Sachs & Co., which visa was valid from June 1, 1997 to June 1, 2000. In early 2000, Goldman, Sachs & Co. again petitioned the INS to extend petitioner's employment in United States "until the expiry of his permitted six years in H status, i.e., July 18, 2001." The request for an extension was granted and petitioner's H-1B visa was extended to July 18, 2001.

7. Sometime prior to the expiration of his H-1B visa on July 18, 2001, petitioner applied for a permanent resident card. The INS issued a permanent resident card to petitioner with an effective date of June 19, 2001 and an expiration date of June 19, 2003.

8. In January 1997 petitioner began the interview process with Goldman, Sachs & Co. Pursuant to a Revised Offer Letter dated January 30, 1997, Goldman, Sachs & Co. offered petitioner a full-time position of New Associate Programmer Analyst in its New York City Information Technology Department. On February 6, 1997, petitioner accepted Goldman, Sachs & Co.'s offer of employment, indicating a start date of June 30, 1997 so that he could fulfill his contractual obligation to the Dominican Academy, which obligation would expire in June 1997.

9. The January 30,1997 Revised Offer Letter from Goldman, Sachs & Co. did not contain any language to suggest that petitioner's employment with the firm was temporary in nature and for the accomplishment of a particular purpose. A letter dated March 28, 2000, from Goldman, Sachs & Co.'s Vice President, Human Resources which was submitted to the INS in support of its petition to have petitioner's H-1B visa extended to July 18, 2001, described petitioner's duties in the following manner:

> Mr. Pritchard serves in our Consolidated Balance Sheet and P&L Reporting Technology department, where his responsibilities include: developing, modifying, and maintaining computer programs to service the needs of various business units; performing program debugging and testing; documenting new and modified programs; liaising with users to develop required modifications; and preparing status reports on system efficiency.
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> * * *
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> Mr. Pritchard's academic and professional credentials render him highly qualified to perform the specialized duties of a Programmer/Analyst. Specifically, he possesses a Master's degree in Physics from Columbia University, which program included extensive coursework in Computers and Information Systems Management. This training provided him with the analytical, mathematical and computer skills which enable him to successfully carry out the above duties. He has in fact fulfilled all of these duties to our utmost satisfaction, and we therefore wish to continue to employ him in this position for the remainder of the time permitted him in H status.

10. Pursuant to notices dated May 29, 1997 and June 7, 2000, the INS approved Goldman, Sachs & Co.'s application for a H-1B visa for petitioner and also its request for an extension of the H-1B visa. Both notices indicated that "[t]he above petition and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized."

11. From the commencement of his employment with Goldman, Sachs & Co. in 1997 through the end of 2001 petitioner has worked on no more than two or three projects, each lasting multiple years. There was no change in the terms, conditions or duties of petitioner's employment with Goldman, Sachs & Co. after he obtained his permanent resident card on June 19, 2001.

12. For the years 1992 through 2000, petitioner filed income tax returns as a nonresident of New York State and New York City. For the 2001 tax year, petitioner's tax return claimed that he incurred a change of residence to the State and City of New York effective August 12, 2001. Petitioner's returns for all years subsequent to 2001 were filed as a full-year resident of the New York. Petitioner filed as a single individual for the years 1992 through 1998. On some unknown date in 1999 petitioner was married and his filing status for the years 1999, 2000 and 2001 was married filing separately. Petitioner and his spouse filed joint New York resident income tax returns for all years subsequent to 2001.

13. The Division of Taxation ("Division") conducted an audit of petitioner's 2000 and 2001 income tax returns which resulted in the issuance of separate statements of proposed audit changes, both dated February 12, 2004. Each statement included the following explanation for the assertion of New York State and City income tax due:

> Section 105.20(e)(1) of the Regulations contemplates that the term temporary means a fixed and limited period as opposed to a stay of indefinite duration. An employee's stay in New York will be presumed to be temporary if the duration of the stay in New York is reasonably expected to last for three years or less.
>
> Section 105.20(e)(1) of the regulations contemplates that the phrase particular purpose means that the individual is present in New York State to accomplish a specific assignment that has readily ascertainable and specific goals and conclusions, as opposed to an assignment with general goals and conclusions. An assignment to New York for general duties would not constitute a particular purpose even if the individual's

> assignment to New York were related to some specialized skill or attributes that the individual may possess.
>
> An individual cannot have multiple or consecutive fixed and limited periods nor multiple or consecutive particular purposes. Therefore, a change in assignments would indicate that the individual is no longer here for a fixed and limited period nor for the accomplishment of a particular purpose.
>
> Information available to us indicates that you have resided in New York State/New York City since 1992.
>
> A review of your reply indicates that your assignment to New York was for general duties and not for the accomplishment of a particular purpose as contemplated by Section 105.20(e)(1) of the Regulations.
>
> Based on the above, your New York tax liability has been recomputed as a full year New York State and New York City resident. . . .

14. On April 5, 2004 and April 8, 2004, the Division issued separate notices of deficiency to petitioner for the years 2000 and 2001, respectively. For the year 2000, the Notice of Deficiency asserted that additional New York State and City personal income taxes were due in the sum of $4,130.40, together with interest of $816.67. The Notice of Deficiency for the 2001 tax year asserted additional New York State and City personal income taxes due of $2,637.18 and interest of $332.77.

CONCLUSIONS OF LAW

A. Tax Law § 601 imposes New York State personal income tax on "resident individuals." In turn, Tax Law § 605(b)(1) defines "resident individual" as someone:

> (A) who is domiciled in this state, unless (i) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . or
>
> (B) 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. . . .

The definition of "resident" for New York City income tax purposes, pursuant to the New York City Administrative Code § 11-1705(b), is identical to that for State income tax purposes except for the substitution of the term "city" for "state."

B. In the instant matter, there is no dispute that petitioner was not a domiciliary of New York for all of 2000 or from January 1, 2001 to August 11, 2001. There is also no question that petitioner maintained a place of abode in New York City during both years at issue and that he spent more than 183 days of each year within the State and City of New York. As a result, in order to conclude that petitioner was taxable as a "resident individual" pursuant to Tax Law § 605(b)(1)(B), thus requiring him to pay New York personal income tax on income from all sources, it must be determined if petitioner maintained a *permanent* place of abode in New York City.

C. The Tax Law does not include a definition of the term "permanent place of abode." However, the Commissioner's regulations at 20 NYCRR 105.20(e)(1) provides the following interpretation of this term:

> *Permanent place of abode*. (1) A permanent place of abode means *a dwelling place permanently maintained by the taxpayer*, whether or not owned by such taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Furthermore, a barracks or any construction which does not contain facilities ordinarily found in a dwelling, such as facilities for cooking, bathing, etc., will generally not be deemed a permanent place of abode. *Also, a place of abode, whether in New York State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose.* For example, an individual domiciled in another state may be assigned to such individual's employer's New York State office for a fixed and limited period, after which such individual is to return to such individuals's permanent location. If such an individual takes an apartment in New York State during this period, such individual is not deemed a resident, even though such individual spends more than 183 days of the taxable year in New York State, because such individual's place of abode is not permanent.

> Such individual will, of course, be taxable as a nonresident on such individual's income from New York State sources, including such individual's salary or other compensation for services performed in New York State. However, if such individual's assignment to such individual's employer's New York State office is not for a fixed or limited period, such individual's New York State apartment will be deemed a permanent place of abode and such individual will be a resident for New York State personal income tax purposes if such individual spends more than 183 days of the year in New York State. The 183-day rule applies only to taxpayers who are not domiciled in New York State (emphasis added).

D. Resolution of the controversy at issue herein hinges solely on the determination of whether petitioner's stay in New York was temporary for the accomplishment of a particular purpose as contemplated in 20 NYCRR 105.20(e)(1). If it is found that petitioner's stay was temporary for the accomplishment of a particular purpose, then his place of abode in New York was not permanent and he properly filed his tax returns as a nonresident. Conversely, if it is determined that petitioner's stay in New York was not for a fixed or limited period to accomplish a particular purpose, then the Division correctly concluded that petitioner was taxable as a resident individual.

E. In ***Matter of Evans***, Tax Appeals Tribunal, June 18, 1992, ***confirmed*** 199 AD2d 840, 606 NYS2d 404, the Tribunal, in determining whether the petitioner therein maintained a permanent place of abode in New York, cited to a now 66-year old opinion of the Attorney General (1940 Op. Att'y Gen. P. 246, March 28, 1940), which opinion provided as follows:

> If one were to give the fullest effect to the word "permanent," then a person maintaining a "permanent place of abode" in New York should be considered as a domiciliary. But, careful study of the language of section 350(7) of the Tax Law compels the conclusion that the Legislature did not intend that the word "permanent" should be construed as meaning the ultimate in the way of a residence established for all time to come. Obviously, it intended rather an abiding place, established either by a domiciliary or a nondomiciliary, having a fixed or established character as distinguished from intermittent or transitory.

F. Careful examination of the facts in this case leads to the conclusion that petitioner did not maintain his New York City apartments *only* during a *temporary* stay and for the accomplishment of a *particular* purpose. While it is true that petitioner's stay in the New York was potentially limited to a definitive time period pursuant to the conditions set forth in his H-1B visa, this is but one factor to consider when determining if his stay in New York was temporary and for the accomplishment of a particular purpose. Petitioner's overall conduct supports that his intention during the years in question was to remain in New York and that his place of abode in New York City was permanent and not intermittent or transitory.

When petitioner first came to New York in 1992 there is no doubt that his stay was temporary to accomplish a specific purpose, *i.e.*, obtain a Master's Degree from Columbia University. Petitioner then spent the next three years living and working in New York City on an alleged temporary assignment for the accomplishment of a specific purpose, that is, teaching high school students at the Dominican Academy. Petitioner maintains that he accepted another temporary job for the accomplishment of a specific assignment when he accepted employment with Goldman, Sachs & Co. in June 1997, where he has remained continuously employed to the present time, a span of some nine years. Petitioner's broad range of responsibilities suggests that his job at Goldman, Sachs & Co. entailed general duties and was thus not for the accomplishment of a particular purpose. Petitioner's at-will employment status also supports that his stay in New York was of indefinite duration and was neither temporary nor for the accomplishment of a particular purpose.

Petitioner has been living and working in New York on a continuous basis for more than 14 years, was married in 1999, has lived with his spouse in New York City since the marriage and applied for and received his permanent resident card. There is simply no credible evidence

in the record to support that petitioner's employment at Goldman, Sachs & Co. was either temporary or for the accomplishment of a particular purpose. Accordingly, petitioner has failed to sustain his burden of proof (Tax Law § 689[e]) to show that his abode in New York City for the years 2000 and 2001 was not a permanent place of abode (***see, Matter of El-Tersli v. Commr.,*** 14 AD3d 808, 787 NYS2d 526) and such abode is therefore found to be a permanent place of abode within the meaning and intent of Tax Law § 605(b)(1)(B) and 20 NYCRR 105.20(e)(1).

G. The petition of Adam Pritchard is denied and the notices of deficiency dated April 5, 2004 and April 8, 2004 are sustained, together with such additional interest as may be lawfully due and owing.

DATED: Troy, New York
November 13, 2006

/s/ James Hoefer
PRESIDING OFFICER