STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOHN J. AND LAURA BARKER	:	DETERMINATION ON REMAND DTA NO. 822324
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 2002, 2003 and 2004.	:	

Petitioners, John J. and Laura Barker, 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 2002, 2003 and 2004.

Following a hearing and the submission of briefs, Joseph W. Pinto, Jr., Administrative Law Judge, issued a determination dated November 19, 2009, which denied the petition and sustained the Notice of Deficiency dated May 8, 2008.

Petitioners timely filed an exception to the determination and in a decision dated January 13, 2011, the Tax Appeals Tribunal sustained that portion of the Administrative Law Judge's determination with respect to the tax asserted in the Notice of Deficiency but remanded the matter to the administrative law judge with the following direction:

> We remand this matter to the Administrative Law Judge to issue a supplemental determination to address whether petitioners established reasonable cause for the abatement of penalties imposed pursuant to Tax Law § 685(b)(1), (2) and (p). Specifically, we wish to know whether the record demonstrates a reasonable basis for petitioner's claim that they did not maintain a permanent place of abode within New York State as reflected on their tax returns for the years in issue or whether petitioners' conduct was intentionally obfuscatory or wilfully negligent.

* * *

ACCORDINGLY, it is ORDERED, ADJUDGED and DECREED that:

5. This matter is remanded for the issuance of a supplemental determination consistent with this decision.

ISSUE

Whether petitioners established reasonable cause for the abatement of penalties imposed pursuant to Tax Law § 685(b)(1), (2) and (p) and whether the record in this matter demonstrates a reasonable basis for petitioners' claim that they did not maintain a permanent place of abode in New York State as reflected on their tax returns for the years in issue or if their conduct was intentionally obfuscatory or wilfully negligent.

FINDINGS OF FACT

Findings of Fact 1 through 28 in the November 19, 2009 determination are incorporated herein by reference. In addition, Finding of Fact 24 from the November 19, 2009 determination as modified by the Tax Appeals Tribunal, is also incorporated by reference.

Additionally, this determination makes the following Findings of Fact based on the existing record:

1. By letter, dated March 16, 2005, the Division of Taxation informed petitioners that they were being audited for the years in issue and enclosed a nonresident audit questionnaire. The questionnaire contained the following question:

> "5. For the tax years indicated, did you own, rent, lease or otherwise maintain living quarters in New York State?"

2. Petitioners answered the question in the affirmative and supplied the address and telephone number.They also added in handwritten notes:

"Taxpayer spent approximately 12-15 days on an annual basis, weekends only."

3. In question 9 of the same questionnaire, in answer to the question of how many nonworking days they spent in New York State, petitioners answered:

"Physically present in New York State for non-working days 12-15 days per year at summer home in Amaganset."

4. Petitioners submitted the questionnaire on or after April 30, 2005, more than two weeks after they signed their 2004 New York State Nonresident Income Tax Return in which they indicated that they did not maintain living quarters in New York State in 2004.

5. As noted in the Tax Appeals Tribunal's modified Finding of Fact 24, petitioners answered "no" to the question of maintaining living quarters in New York State on each of the income tax returns they filed for the audit period. An affirmative answer to the question would have required petitioners to complete schedule B of form IT-203-ATT, which asks for the address of the living quarters and the number of days spent in New York State during the year. Petitioners did file form IT-203-ATT for all tax years under audit for the purpose of claiming the New York State itemized deduction, but left schedule B blank.

6. Petitioners raised no arguments for the abatement of penalties before the administrative law judge.

CONCLUSIONS OF LAW

Conclusions of Law A through G in the November 19, 2009 determination are incorporated herein by reference.

Additionally, this determination makes the following Conclusions of Law based on the existing record:

A. The Tax Appeals Tribunal remanded this matter to address the issue of whether petitioners established reasonable cause for the abatement of penalty. As stated in Conclusion of

Law G, which sets forth the legal underpinning for petitioners' liability for the penalties, petitioners never raised any argument for abatement of the penalties asserted, and the record does not demonstrate a reasonable basis for their claim that they did *not* maintain a permanent place of abode in New York State.

As of April 30, 2005, they admitted to the Division of Taxation in the nonresident audit questionnaire that they maintained a *summer home* in Amaganset for the years 2002 and 2003 (the years covered by the nonresident questionnaire), directly the opposite of their declaration in question F on the 2004 income tax return, signed a few weeks earlier, that they maintained no living quarters in New York State. The timing of this admission underscores petitioners' belief that they did in fact have a *home* in New York State and that their answers to the "living quarters" question on the returns filed were in error.

The incorrect answers to question F on the forms IT-203 for the audit years were not insignificant. At a minimum, there was a good chance that a negative answer to the question would forestall an inquiry by the Division of Taxation into the residency issue. By informing the Division each year in issue that they did not maintain living quarters in New York State, they avoided having to complete schedule B of form IT-203-ATT, which would have disclosed the Napeague property and the days spent in New York State.

It can also be noted that petitioners filed the form IT-203-ATT with each of the three income tax returns filed for the years in issue. They did this to claim the New York itemized deduction on schedule C on that form. However, directly above schedule C was schedule B, that was directed to nonresidents who maintained living quarters in New York State. This presented yet another opportunity to divulge the existence of the Napeague home.

These are uncontroverted facts in the record and they are very credible given the documents in which they are found and the dates they were created. This is just as true for New York State as it is for the federal government.

> Our complex and comprehensive system of federal taxation, relying as it does upon self-assessment and reporting, demands that all taxpayers be forthright in the disclosure of relevant information to the taxing authorities. Without such disclosure, and the concomitant power of the Government to compel disclosure, our national tax burden would not be fairly and equitably distributed (***United States v. Arthur Young & Co.***, 465 US 805 [1984]).

Any claim by petitioners that they did not maintain living quarters in New York State was negated by their admission in the nonresident questionnaire and all of the facts that became the basis for the administrative law judge's and Tribunal's conclusion that they did maintain a permanent place of abode in New York State during the years in issue.

Taxpayers are responsible for the representations made on their income tax returns and may not deny knowledge of information contained therein on which the Division may rely.

B. Accordingly, it is determined that petitioners have not established reasonable cause for the abatement of penalties imposed pursuant to Tax Law § 685(b)(1), (2) and (p), and that portion of the Notice of Deficiency, dated May 8, 2008, that asserted said penalties is sustained.

DATED: Troy, New York
April 7, 2011

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE