

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CRYSLER

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1979.

Petitioner, John Crysler, 12 Orchard Street, Marcellus, New York 13108, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1979 (File No. 40644).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 7, 1985 at 1:15 P.M. Petitioner appeared by John Moss, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly considered petitioner to be taxable as a resident of New York during 1979.

FINDINGS OF FACT

1. On or about March 15, 1980, petitioner filed a New York State Income Tax Resident Return for the year 1979. On this return, petitioner reported that his total income, consisting of salary and wages, was \$13,813.93.

2. On August 26, 1982, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax in the amount of \$611.78, plus interest of \$154.80, for a total amount due of \$766.58. The Statement of Audit Changes which had been issued on August 14, 1981, explained

was federal adjusted gross income. Since petitioner's reported federal adjusted gross income was \$20,508.00, an adjustment in the amount of \$6,695.00 was made to petitioner's reported income.

3. On or about September 17, 1982, petitioner filed an Amended New York State Income Tax Return for the year 1979 and a Schedule for Change of Resident Status. On the amended return, petitioner reported the same total income as had been originally reported. However, he prorated the standard deduction and personal exemption based upon being a resident of New York State for a period of nine months. Petitioner also claimed household credit of \$26.00. On the Schedule for Change of Resident Status, petitioner reported that he was a New York State resident from April 15, 1979 to December 31, 1979.

4. Prior to January, 1978, petitioner rented part of a house located in Skaneateles, New York. He was employed in construction work while residing in New York.

5. On January 3, 1978, petitioner moved from Skaneateles, New York to an apartment complex in Metairie, Louisiana. Petitioner moved to Louisiana because he found Louisiana's climate preferable for work on construction sites. At the time he moved to Louisiana, petitioner **did** not intend to return to New York. Petitioner took all of his personal belongings with him when he moved to Louisiana.

6. Petitioner closed his New York State bank account and opened a bank account with the Bank of New Orleans shortly after moving to Louisiana.

7. Within approximately two weeks of moving to Louisiana, petitioner found work involving bridge construction with a firm known as Complex Industries. Approximately one month after moving, petitioner registered his automobile and ~~motorcycle with the State of Louisiana~~

8. After residing in Metairie, Louisiana for a period of time, petitioner moved to Houma, Louisiana. The reason why petitioner moved was to be closer to a new construction site he was going to be working at. Thereafter, petitioner moved to Gray, Louisiana, which was located approximately five miles from Houma.

9. On June 8, 1978, petitioner obtained a Louisiana driver's license.

10. On December 4, 1978, petitioner opened a savings account with the American Bank and Trust Co. of Houma. The savings account was closed on March 28, 1983.

11. During April, 1979, petitioner completed the first phase of work he was performing on bridge construction and had approximately a week of vacation time before he was expected to commence the second phase of his work. Therefore, he decided to return to New York to visit friends. When he returned to New York, he met the individual that eventually became his wife and, in deference to her wishes, he decided to remain in New York.

12. Petitioner filed an income tax return with the State of Louisiana for the year 1978. He did not file an income tax return with the State of Louisiana for the year 1979 because there was state withholding during the year and he did not consider it worth the effort to file a return.

13. Petitioner did not register to vote while residing in Louisiana. However, he had not voted in New York, prior to the year in issue, since 1968.

14. Petitioner did not join any social or athletic clubs while residing in Louisiana nor has he joined any social or athletic clubs since returning to New York.

CONCLUSIONS OF LAW

A. That 20 NYCRR §102.2(d)(1) provides that, in general, domicile "...is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent."

B. That petitioner has sustained his burden of proof imposed by section 689(e) of the Tax Law of establishing that he changed his domicile to Louisiana in 1978.

C. That once a domicile is established, it will continue "...until the person in question moves *to* a new location with the bona fide intention of making his fixed and permanent home there." (20 NYCRR 102.2[d][2]).


D. That since petitioner was not a domiciliary or resident of New York until April 15, 1979, his wages were not subject to New York State personal income tax prior to this date (Tax Law §§605[a][2]; 654[b]).

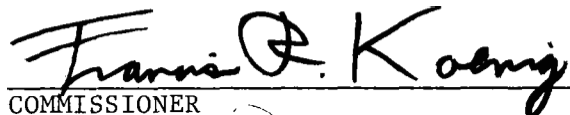
E. That the petition of John Crysler is granted and the Notice of Deficiency dated August 26, 1982 is cancelled.



DATED: Albany, New York

STATE TAX COMMISSION

FEB 16 1983


PRESIDENT


COMMISSIONER

 
COMMISSIONER