

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER CONLEY AND JUDITH CONLEY

DECISION

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

Petitioners, Walter Conley and Judith Conley, 34 Tower Road, West Haven, Connecticut 06516, 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 Nos. 40817/40818).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 18, 1985 at 1:15 P.M., with all briefs to be submitted by August 16, 1985. Petitioners appeared by Stephen P. Mayka, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner Walter Conley's claim for refund was properly denied **on** the basis that he was domiciled in the State of New York and either maintained a permanent place of abode in the State of New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than thirty days in the State of New York and was thus a resident individual under section 605(a)(1) of the Tax Law.

11. Whether petitioner Judith Conley's claim for refund **was** properly denied.

FINDINGS OF FACT

1. Petitioners, Walter Conley and Judith Conley, timely filed a New York State Income Tax Resident Return for the entire taxable year 1979 under filing status "Married filing separately on one return". Their address reported on such return was 404 Tifft Avenue, Horseheads, New York 14845. Annexed to such return was a New York State Claim For Resident Tax Credit whereon Mr. Conley claimed credit for taxes paid to the State of Ohio during 1979 of \$720.72. His separately filed 1979 Ohio return, which also bore the Horseheads, New York address, was filed under Ohio residency status "Nonresident". Attached to each return was a Wage and Tax Statement from General Electric Company (GE). The statement attached to his New York return was issued by GE in Schenectady, New York and reported his address as 404 Tifft Avenue, Horseheads, New York. The statement attached to his Ohio return was issued by GE in Cleveland, Ohio and reported his address as 40 Hughes Street, Youngstown, Ohio. Both returns were prepared by a New York certified public accountant.

2. On October 1, 1981, petitioners filed separate amended New York State returns for 1979. On Mr. Conley's amended return he claimed that his period of New York State residence during said year was from January 1 through March 31. On such return he reported only those wages earned prior to his purported change of residence. Originally claimed deductions and an exemption for his daughter were shifted to his wife's return. Said shift in the deductions and exemption formed the basis of Mrs. Conley's amended return, which was filed on a full year New York State residency basis. The refund claimed on Mr. Conley's amended return was \$2,439.08. The refund claimed on Mrs. Conley's amended return was \$290.82.

3. On July 26, 1982, the Audit Division issued a notice to each petitioner advising them that their respective claims for refund had been disallowed in full. The explanation given for the disallowance of Mr. Conley's claim was as follows:

"Refund claimed on amended return for 1979 is disallowed because no information submitted substantiates that a change of residence from New York State occurred in the tax year 1979."

The explanation given for the disallowance of Mrs. Conley's claim was as follows:

"Refund claimed on amended return for 1979 is disallowed because acceptance of such claim would result in a substantially higher tax liability on separate return of your husband, Walter Conley."

4. Prior to 1979 petitioners were domiciliaries and residents of the State of New York for many years. They owned a three bedroom ranch style house in Horseheads, New York, a suburb of Elmira. Since approximately 1968, Mr. Conley has been a full time employee of GE.

5. In or about February, 1979 GE advised Mr. Conley that it intended to close **its** Elmira plant. On or about April 1, 1979 Mr. Conley was transferred from his position of Manager of Labor Relations and Plant Safety at the Elmira plant to Manager of Plant Employee and Community Relations at GE's Youngstown, Ohio lamp plant.

6. Mr. Conley testified that upon his transfer to Ohio he moved to an apartment located at "40 Hughes Street, Youngstown, Ohio". His wife and daughter continued to reside in their Elmira, New York home. Said apartment purportedly contained a bedroom, kitchen and sitting room. Mr. Conley testified that he furnished the apartment with furniture brought from his Elmira, New York home as well as with new furniture purchased **in** Ohio. Said apartment was purportedly rented to petitioner on a month to month basis.

very old and he performed services for her such as taking out the garbage, cutting the grass and washing the windows. To evidence his rental of said apartment Mr. Conley submitted rent receipts from one Vivian Jennings. However, review of such rental receipts show that they were issued to Mr. Conley with respect to a "room" rented at "243 Norwood Avenue", Youngstown, Ohio, not with respect to an apartment allegedly maintained at 40 Hughes Street. Additionally, a letter from GE dated April 2, 1982, which was submitted by Mr. Conley, shows in the letterhead that 40 Hughes Street, Youngstown, Ohio was the address of the Incandescent Lamp Department of GE's Youngstown Lamp Plant, not Mr. Conley's apartment. Furthermore, a letter submitted by Mr. Conley dated August 30, 1983 from one J.L. Null, Manager of Plant Accounting, Ohio Lamp Plant, states in pertinent part that:

"In July, 1979 he (Mr. Conley) advised me he was living at 243 Norwood Avenue, Youngstown, Ohio which to my knowledge remained his address until he transferred to GE Credit Corporation, Stamford, Conn., effective June 16, 1980."

7. Since the documentary evidence submitted directly contradicts petitioners testimony rendered with respect to the location and nature of Mr. Conley's Youngstown, Ohio dwelling (see Finding of Fact "6", supra), all further testimony rendered by petitioners with respect to their intent and actions is deemed to be incredible.

8. In June, 1980 Mr. Conley left the Youngstown, Ohio plant to accept a new job opportunity with GE in Stamford, Connecticut.

9. Mr. Conley alleged that both his transfer to Youngstown, Ohio and his subsequent transfer to Stamford, Connecticut were permanent in nature.

10. In the late summer of 1980, petitioners purchased a house in Connecticut. Their Elmira, New York house was sold in 1980 prior to said purchase.

CONCLUSIONS OF LAW

A. That a domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there for only a limited time. (20 NYCRR 102.2(d) (2)).

B. That petitioner Walter Conley has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that he effected a change of domicile from New York to Ohio during 1979. Accordingly, Mr. Conley was domiciled in New York State during the entire taxable year 1979.

C. That section 605(a) of the Tax Law provides that:

"A resident individual means an individual:

(1) Who is domiciled in this state, unless 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..."

D. That petitioner Walter Conley has failed to sustain his burden of proof to show that he has met the requirements provided in section 605(a)(1) of the Tax Law. Accordingly, **it** is hereby deemed that petitioner Walter Conley was a resident individual of New York State during the entire taxable year 1979.

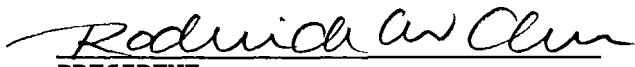
E. That petitioner Walter Conley's claim for refund (amended return) is denied and the notice of disallowance in full of such claim, dated July 26, 1982, **is** sustained.

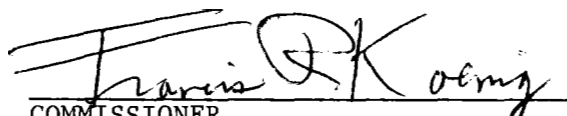
F. That petitioner Judith Conley's claim for refund (amended return) is denied and the notice of disallowance in full of such claim, dated July 26, 1982, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER