

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GORDON GRIFFITHS AND ELEANOR GRIFFITHS

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, Gordon Griffiths and Eleanor Griffiths, Ketchum Road, Burke, New York 12917, 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. 48023).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W. Averell Harriman State Office Building Campus, Albany, New York on April 2, 1986 at 9:15 A.M. Petitioner Gordon Griffiths appeared pro se and for his wife. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether, during the year 1979, petitioners were domiciled in New York and maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than thirty days in New York, and were thus resident individuals under Tax Law § 605(a)(1).

FINDINGS OF FACT

1. Petitioners, Eleanor and Gordon Griffiths, did not file a New York State income tax return for the year 1979.
2. On August 10, 1983 the Audit Division issued a Notice of Deficiency to petitioners asserting a deficiency of personal income tax for the year 1979.

the amount of \$947.00 plus penalty of \$402.49 and interest of \$344.05 for a total amount due of \$1,693.54. The Statement of Audit Changes, which had been issued on September 3, 1982, explained, in essence, that petitioners were taxable as residents of New York on all sources of income within and without New York State. The penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for, respectively, failure to file a tax return on or before the prescribed date and failure to pay the tax on a return required to be filed.

3. After the Notice of Deficiency was issued, the Audit Division waived the penalties asserted to be due.

4. Gordon Griffiths was born and raised in Canada. Prior to and during the year in issue, he worked for a firm in Montreal, Canada.

5. In June, 1978, Gordon Griffiths married Eleanor Griffiths. At the time of their marriage, Eleanor Griffiths resided in a home owned by her mother in Burke, New York.

6. On December 1, 1978, Mr. Griffiths immigrated to the United States and acquired resident alien status. At the time he immigrated, Mr. Griffiths intended to make New York his permanent place of abode and began using the address of his mother-in-law's home as his personal mailing address.

7. During the year in issue, Mr. Griffiths maintained a joint checking account with his wife in New York. He did not maintain a checking account in Canada in 1979.

8. At the time of his marriage, Mr. Griffiths anticipated retiring from his employment in two or three years. Because the distance between Burke and Montreal made commuting to work impractical, Mr. Griffiths resided with his wife in Burke on weekends and other times.

Montreal, Mr. Griffiths would either stay at his sister's home in Montreal or at his employer's premises.

9. Mr. Griffiths paid income taxes to the Province of Quebec and Canada for the year 1979. On these returns, Mr. Griffiths reported that his home address was in Burke, New York.

10. In July, 1980, Mr. Griffiths received an early retirement from his employer because he had undergone an operation on his back.

11. Approximately two years after he immigrated to the United States, Mr. Griffiths purchased an abandoned farmhouse in Burke, New York which has subsequently become petitioners' residence.

12. At the hearing, Mr. Griffiths argued, among other things, that he was not in New York a sufficient period of time during the year 1979 to be considered a resident, that he did not work in New York during the year 1979 and therefore his income should not have been subject to New York tax and that the problem herein arose because immigration officials did not advise him that he would have to pay New York State income tax.

CONCLUSION 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." Domicile does not depend on citizenship (20 NYCRR 102.2[d][3]). Thus, when an immigrant has permanently established his home in New York, he is considered a domiciliary of New York regardless of whether he has become a United States citizen or applied for citizenship (20 NYCRR 102.2[d][3]). Since Mr. Griffiths immigrated to New York on December 1, 1978 with the intention of making New York his permanent home, he is considered a domiciliary for the year 1979.

B. That, during the year in issue, section 605(a) of the Tax Law defined resident individual as follows:

"Resident individual. A resident individual means an individual:

- (1) who is domiciled in this state, unless
- (A) he maintains no permanent place of abode in this state, maintains a permanent place **of** abode else-where, and spends in the aggregate not more than thirty days of the taxable year in this state... .

C. That since petitioners were domiciliaries **of** New York during the year **in issue** and did not satisfy the requisite criteria to be considered nonresidents, the Audit Division properly concluded that petitioners were resident individuals within the meaning of section 605(a)(1)(A) **of** the Tax Law.

D. That, in general, resident aliens are taxed the same as citizens of the United States. (Treas. Reg. 1.871-1(a)). Therefore, the Audit Division properly determined that, as residents of New York, petitioners were taxable **on** all sources **of** income within and without New York State.

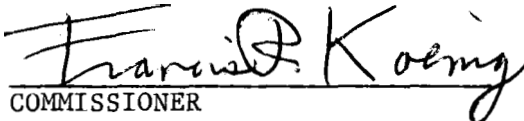
E. That the petition of Gordon Griffiths and Eleanor Griffiths **is** denied and the Notice **of** Deficiency issued August 10, 1983, as modified by Finding **of** Fact "3", **is** sustained.

DATED: Albany, New York

STATE **TAX** COMMISSION

NOV 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER