

STATE OF NEW YORK

STATE **TAX** COMMISSION

In the Matter of the Petition

of

TIMOTHY H. MEYER

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the Year 1980.

Petitioner, Timothy H. Meyer, 2 Albert Place, London, W8, England, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 **of** the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1980 (File No. 49431).

On June 11, 1986, petitioner waived a hearing and submitted the case to the State Tax Commission for decision based on the Department of Taxation and Finance file and an affidavit of petitioner, with all briefs to be submitted by July 29, 1986. After due consideration, the State Tax Commission hereby **renders the following decision.**

ISSUES

I. **Whether petitioner was domiciled in New York State and New York City during the year at issue.**

II. If petitioner was domiciled in New York State and New York City, was petitioner a nonresident **of** New York after August 1980, under section 605(a)(1)(B)(iii) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York (the 548 day rule).

FINDINGS OF FACT

1. Petitioner, Timothy H. Meyer, and his wife, Jane Meyer, filed two joint New York State income tax returns for 1980: (a) a resident return for eight months of the year; and (b) a nonresident return for the balance of the year. The resident return included City of New York personal income tax and the nonresident return included City of New York nonresident earnings tax.

2. On February 3, 1983, the Audit Division issued a Statement of Audit Changes to petitioner and his wife asserting that \$2,165.47 in New York State and New York City personal income tax, plus penalty of \$108.27 and interest, was due. The explanation was as follows:

"Since you are not willing to list your location for the 117 days you wanted to use for your nonresident period despite two requests from us, I have no choice but to process your return as a full year resident. Also, since you had a capital gain on the sale of your New York residence, you should have filed a Bond with New York State before leaving for England. You will be taxable on this gain unless you purchased a home of equal or greater value by October of 1982."

The basis of the penalty was not stated.

3. On May 5, 1983, the Audit Division issued a Notice of Deficiency to petitioner for \$2,165.47 in tax, plus penalty of \$108.27 and interest.

4. For purposes of the submission, the Audit Division has conceded that the only issues to be resolved are those relating to domicile and, if necessary, the applicability of the 548 day rule.

5. Petitioner was born in Portland, Oregon, and grew up in Salem, Oregon, where he attended school through high school.

6. Upon graduation from high school, petitioner entered college in San Francisco, California.

7. Upon graduation from college, petitioner attended school in Luvain,

8. After attending school in Belgium, petitioner returned to Salem, Oregon, where he attended law school.

9. Upon completion of law school, petitioner attended the Graduate School of International Business in Arizona, where he obtained a degree in 1970. He chose this school because it had an outstanding record of placing graduates in positions overseas. Foreign banks regularly visited the school because most of the students had lived abroad and wished to work abroad.

10. After petitioner's graduation from business school, he interviewed with many employers throughout the United States seeking to obtain a job in the international field outside the United States.

11. Because petitioner's education was geared toward working in the international banking and business fields, petitioner sought a job in those areas. He consulted banks known to him in Oregon and was referred by one Oregon bank to Allied Bank International ("ABI"), in which the Oregon bank was a shareholder. ABI did not do a domestic business, but was engaged solely in foreign matters.

12. Petitioner had an interview with ABI and was offered and accepted a position as an executive trainee. He accepted it because it gave him an opportunity to train and subsequently work in one of the bank's foreign offices. He was assigned to the bank's office in New York for training.

13. Petitioner then moved to New York City and occupied a rental apartment. He did not own a home anywhere prior to coming to New York City since he had been a student and had considered his family home in Oregon to be his home.

14. Upon completion of his training, petitioner received his first foreign assignment in Argentina.

15. Upon completion of his assignment in Argentina, he was assigned to the New York City office. He was then assigned to Brazil for a short period which assignment was followed by another assignment in New York City, followed again by an assignment in London which again was followed by an assignment in New York City. During his several assignments in New York City, petitioner travelled extensively and lived both in New Jersey and in New York City.

16. On August 19, 1973, petitioner was married at Bembridge, Isle of Wight, England. His wife was and is a citizen of the United Kingdom. After his marriage, his wife and later his children joined him on foreign assignments.

17. During the period 1970 through 1978, petitioner did not own an apartment or other residence in New York City. He lived in various rental apartments. In 1978, the apartment house in which he was then a tenant converted to a cooperative and tenants were offered the apartments at discounted prices. Petitioner purchased the shares for his apartment.

18. Petitioner and his wife had two children while living in New York. The eldest attended the kindergarten grade of Grace Church School in Manhattan before the family's departure for London in 1980.

19. In 1980, petitioner received and accepted an open-ended offer to work in London for an indefinite period for ABI's London office. He sold his apartment and then left New York City for London (via Oregon and California) with his wife and family on August 22, 1980. In 1983, ABI asked petitioner if he would accept a position in New York and he declined. He remained in London for five years, until 1985, when he resigned from ABI. Since resigning from ABI, petitioner has continued to work in London and has lived with his family in a rented house.

20. After petitioner's arrival in London in 1980, he made several return business visits to various cities in the United States, including New York, Chicago, Indianapolis, St. Louis, Dallas, Fort Worth, Miami, Denver and Portland, among others.

21. While petitioner lived in New York City, he had one bank account, which he maintained **as** part of ABI's direct salary credit program for all employees, a New York driver's license, a New York registered car and membership in a club located in New York City. After he left New York City in 1980, he retained the bank account in New York in order to receive further salary credits from ABI. He **sold** his car and changed the address on the driver's license to ABI's address, and converted his club membership to "foreign resident" status, **so** that he could make use **of** reciprocal privileges with several London clubs. When he left New York, his New York driver's license had time left before it expired, and he has maintained it using ABI's address as a matter of convenience since he has no other United States driver's license.

22. While petitioner was working with ABI, for "home leave" purposes petitioner always listed his "home" with ABI as being Oregon and ABI paid his home leave expenses to Oregon (ABI was obligated to fly petitioner back **to** his "home" periodically). During the time petitioner has been living away from Oregon, he has returned several times each year for business and vacations.

23. Petitioner and his wife currently have four children; those of school age are attending English schools in London.

24. Petitioner was a registered voter in Oregon and has from time to time contributed to political campaigns of state and local politicians in Oregon.

Petitioner's family's farm is in Salem, Oregon, and he purchased real estate there to maintain his personal and economic ties in anticipation of moving back to Oregon. The real estate was sold in 1985 because it was too small to accommodate his enlarged family. Petitioner has commissioned a Portland firm to locate a bank in Oregon in which he could take a significant investment position and active negotiations are in progress.

25. Petitioner has always regarded Oregon as his only permanent home. All of his closest family members and friends reside in Oregon and his personal physician and dentist are in Salem, Oregon.

26. The extent **of** petitioner's economic ties to Oregon are as follows: he has an investment in his father's business in Oregon and is actively involved in his father's commercial interests; he holds a second mortgage **on** his sister's house in Portland, Oregon; he has made several personal loans to individuals in Oregon; he is a trustee of family assets located in Oregon and has a beneficial interest in Oregon real estate held in trust.

CONCLUSIONS OF LAW

A. That petitioner remained a domiciliary of Oregon and was not domiciled in New York. Petitioner's situation is similar to that of the petitioners in Matter of the Petition of G. Frank and Carol Shofner, State Tax Commission, November 6, 1981. (~~See also~~ McKone v. New York State Tax Commission, 111 AD2d 1051, affd 68 NY2d 638). Accordingly, petitioner was a nonresident of New York State and New York City after August 1980.


B. That since petitioner was not domiciled in New York, Issue II is rendered moot.

C. That the petition of Timothy H. Meyer is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER