

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter **of** the Petition

of

DAVID W. and MARILYN A. RIVKIN

DECISION

for Redetermination of a Deficiency or for
Refund of New York State and New York City
Income Taxes under Article 22 of the Tax Law
and Chapter **46**, Title T **of** the Administrative
Code of the City of New York for the Years 1980 :
and 1981.

Petitioners, David W. and Marilyn A. Rivkin, 76 Huntington Avenue, Scarsdale,
New York 10583, filed a petition for redetermination of a deficiency or for
refund of New York State and New York City income taxes under Article **22** of the
Tax Law and Chapter **46**, Title T of the Administrative Code **of** the City of New
York for the years 1980 and 1981 (File Nos. 50864 and 54029).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New York
on March 5, 1986 at 1:30 P.M. Petitioners appeared pro se. The Audit Division
appeared by John P. Dugan, **Esq.** (Angelo A. Scopellito, **Esq.**, of counsel).

ISSUE

Whether petitioner David W. Rivkin was a domiciliary **of** New York during
the years at issue.

FINDINGS OF FACT

1. Petitioner David W. Rivkin filed two New York State income tax returns
with City of New York personal income tax and nonresident earnings tax for the
year 1980:

(a) a resident return covering eight months; and

2. Petitioners, David W. and Marilyn A. Rivkin, filed separately on two combined 1981 returns, as follows:

- (a) A New York State and City of New York resident income tax return on which petitioner David W. Rivkin included \$3,552.01 in income from the New York City law firm of Debevoise & Plimpton, and \$68.96 in interest and dividend income, less \$2,500.51 in federal adjustments. Petitioner Marilyn A. Rivkin included all of her income on this return.
- (b) A New York State nonresident income tax return with City of New York nonresident earnings tax on which petitioner David W. Rivkin included only \$28.93 in interest and dividend income as income from New York sources.

These returns indicated New York residence for five months of the year.

3. On August 29, 1983, the Audit Division issued a Statement of Audit Changes to David W. Rivkin for 1980, asserting \$112.63 in additional New York State personal income tax and \$107.00 in New York City income tax, plus interest, on the basis that he had not changed his domicile to Illinois in August, 1980. A credit for taxes paid to the State of Illinois was allowed. On April 5, 1984, a Notice of Deficiency for 1980 was issued to petitioners, David W. Rivkin and Marilyn A. Rivkin, for \$219.63 in additional tax, plus interest.

4. On September 16, 1983, a Statement of Audit Changes was issued to petitioners, David W. and Marilyn A. Rivkin for 1981, asserting \$507.12 in New York State personal income tax and \$327.16 in New York City personal income tax against David W. Rivkin. The adjustments were based on (a) disallowance of Mr. Rivkin's change of residence status; and (b) disallowance of the household credit, since the household gross income was \$25,000.00 or more. A maximum standard deduction of \$2,500.00 was applied solely against Mrs. Rivkin's income, as her adjusted New York income was greater than her husband's.

resulted in excess payments of \$268.68 in state tax and \$152.32 in city tax for petitioner Marilyn A. Rivkin, which amounts were credited to David W. Rivkin, leaving a total additional tax due of \$413.28. On September 28, 1983, a Notice of Deficiency for 1981 was issued against petitioners, David W. Rivkin and Marilyn A. Rivkin, for \$413.28 in additional tax, plus interest.

5. Petitioner David W. Rivkin was born in New York. He lived with his parents in New York City until 1973, when he left to attend Yale University in New Haven, Connecticut. He attended Yale as an undergraduate and also attended Yale Law School. He stayed at his parents' home for brief periods of time during the seven years he was at Yale.

6. In the summer of 1978, after completing his first year of law school at Yale, David W. Rivkin worked twelve weeks at a Chicago, Illinois, law firm.

7. In the summer of 1979, following his second year at law school, petitioner David W. Rivkin worked seven weeks for a New York City law firm and seven weeks for a San Francisco, California, law firm.

8. Mr. Rivkin went to Chicago and San Francisco for summer jobs with the intention of seeing what they were like as places to live, with the idea of possibly returning after he finished law school.

9. Upon graduation from Yale Law School in 1980, petitioner worked for six weeks for Deboise & Plimpton in New York City.

10. One of Mr. Rivkin's colleagues at the Chicago law firm where he had worked during the summer of 1978 had been a clerk for Judge Luther M. Swygert of the United States Court of Appeals for the Seventh Circuit and helped arrange a clerkship with Judge Swygert for Mr. Rivkin.

11. In August, 1980, Mr. Rivkin moved to Chicago to commence his clerkship with Judge Swygert as of September 2, 1980. The clerkship was for one year, with an option for a second year.

12. Mr. Rivkin's intent was to remain in Chicago for an indefinite period of time.

13. Mr. Rivkin leased an apartment in Chicago. The lease was for one year and was renewable.

14. While working for Judge Swygert, Mr. Rivkin had job offers from the law firms in Chicago and San Francisco where he had held summer positions, from two New York City law firms, from an attorney in Washington, D.C. and from the United States Justice Department in Washington, D.C.

15. Mr. Rivkin paid Illinois State income tax on his earnings from the clerkship with Judge Swygert.

16. While in Chicago, Mr. Rivkin opened bank accounts at a Chicago bank.

17. Mr. Rivkin obtained a Illinois drivers license.

18. Mr. Rivkin had relatives, i.e., cousins, uncles and aunts residing in the Chicago area.

19. During 1980 and 1981, Mr. Rivkin was registered to vote in New York City; his registration address was his parents' home. He voted in New York in the 1980 Presidential Election because it was too late for him to register when he moved to Illinois.

20. Mr. Rivkin was admitted to the New York Bar in 1981. He is not admitted to the Illinois Bar.

21. Petitioners, David W. Rivkin and Marilyn A. Rivkin, met while both were students at Yale. While Mr. Rivkin was working for Judge Swygert in Chicago, petitioners decided to get married and to live in New York City.

Mr. Rivkin did not renew the lease on his Chicago apartment and he did not work a second year for Judge Swygert or take a job with one of the out of New York City Law firms that had offered him employment. The petitioners were married on September 13, 1981, at Yale.

22. Mr. Rivkin's 1981 withholding tax statement with respect to his earnings from the clerkship at the Seventh Circuit Court of Appeals in Chicago shows his parents' New York City address because he did not know what his new address would be after he and his future wife were married. Petitioners' 1981 returns, dated June 13, 1982 (with extension of time), show the address 101 West 81st Street, New York City.

CONCLUSIONS OF LAW

A. That petitioner David W. Rivkin did not change his domicile from New York to Illinois when he moved there to take a clerkship with the United States Court of Appeals for the Seventh Circuit. That position was admittedly of limited duration and Mr. Rivkin, it is noted, returned to Devoise & Plimpton, the New York City law firm where he had worked for six weeks upon graduation from law school. Moreover, Mr. Rivkin voted in New York in the fall of 1980. Petitioners have not sustained their burden of proof to show by clear and convincing evidence an intention to change domicile from New York to Illinois.

B. That petitioner David W. Rivkin was a resident individual of New York during 1980 and 1981 within the meaning of section 605(a) of the Tax Law.


C. That the Notice of Deficiency for the year 1981 is effective against petitioner Marilyn A. Rivkin only in respect to the excess payments computed by the Audit Division and credited to her husband pursuant to section 651(b)(4)(A) of the Tax Law.


D. That except as noted in Conclusion of Law "C", the petition of David A. Rivkin and Marilyn A. Rivkin is denied and the notices of deficiency issued on September 28, 1983 and April 5, 1984, are otherwise sustained.

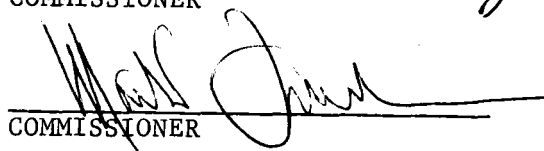
DATED: Albany, New York

STATE TAX COMMISSION

SEP 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER