

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT P. PALMQUIST AND BETTY G. PALMQUIST

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 1981.

Petitioners, Robert P. Palmquist and Betty G. Palmquist, 15 South Briar
Hollow, Houston, Texas 77027, 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 1981 (File No. 52817).

A hearing was held before Brian L. Friedman, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New
York, on January 16, 1986 at 9:15 A.M. Petitioners appeared pro se. The Audit
Division appeared by John P. Dugan, Esq. (Angelo Scopellito, **Esq.**, of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioners' distributive
share of various partnership losses on the basis that petitioners were nonresi-
dents for a portion of the taxable year.

FINDINGS OF FACT

1. On July 15, 1982, the New York **State** Department of Taxation and
Finance received from Robert P. Palmquist and Betty G. Palmquist (hereinafter
"petitioners") a New York State and City of New York Resident Income Tax Return

Earnings Tax Return for the year 1981, both filed under the status "married filing separately on one return." On said returns, petitioners claimed to have been residents of New York for the period January 1, 1981 through August 31, 1981 and nonresidents for the remainder of 1981. Petitioners listed their address on said returns as 668 Middle Street, Portsmouth, New Hampshire.

2. On July 8, 1983, the Department of Taxation and Finance received from petitioners an Amended New York State and City of New York Resident Income Tax Return for the year 1981 filed under the status "married filing joint return." On their amended return, petitioners claimed to have been residents of New York State for the entire year of 1981. As on their original returns, petitioners listed their address as 668 Middle Street, Portsmouth, New Hampshire.

3. For the year at issue, petitioner Robert P. Palmquist was a general partner in the following partnerships: Blue Skies Petroleum; Nina Petroleum Company; 4-J Associates; Tuthill Avenue Associates; Salisbury Properties; and Peaches Company. Of these partnerships, only 4-J Associates and Tuthill Avenue Associates were New York partnerships. All were calendar year basis partnership. Petitioner Robert P. Palmquist incurred total partnership losses for the year at issue in the amount of \$32,415.00, \$9,140.00 of which was derived from the New York partnerships.

4. On January 7, 1984, the Audit Division issued to petitioners a Statement of Audit Changes asserting additional tax due as follows:

	<u>N.Y. STATE</u>		<u>N.Y. CITY</u>		
	<u>HUSBAND</u>	<u>WIFE</u>	<u>HUSBAND</u>	<u>WIFE</u>	
"Personal income tax due	\$2,830.00	\$428.00	\$894.00	\$176.00	
Minimum income tax due	459.00				
Total tax	<u>\$3,289.00</u>	<u>\$428.00</u>	<u>\$894.00</u>	<u>\$176.00</u>	
Withholding	<u>2,092.00</u>	<u>436.00</u>	<u>758.00</u>	<u>166.00</u>	
ADDITIONAL TAX DUE	\$1,197.00	(\$ 8.00)	\$136.00	\$ 10.00	\$1,335.00

The Statement of Audit Changes advised petitioners that information sent in indicated that a change of residence did not occur and, therefore, that petitioners were considered to have been part-year residents for the tax year 1981. On their amended return, petitioners claimed partnership losses in the sum of \$32,415.00. On the Statement of Audit Changes issued to petitioners, the Audit Division disallowed \$23,275.00 of the partnership losses claimed on the basis that, as nonresidents, only that portion of a partner's distributive share of partnership losses derived from or connected with New York sources (\$9,140.00) may be included in determining petitioners' New York adjusted gross income.

5. On May 4, 1984, the Audit Division issued to petitioners two notices of deficiency for the year 1981 asserting, in total, additional tax due of \$1,335.00, plus interest of \$319.66, for a total amount due of \$1,654.66.

6. In 1975, petitioner Robert P. Palmquist, along with Steve Maun and Mark Gaumond, entered into a three-year lease for an apartment located at 161 West 54th Street, New York, New York, which lease was extended for additional three-year periods in 1978 and again on March 1, 1981.

7. Prior to the year at issue, petitioners resided in New York City. Petitioner Robert P. Palmquist was employed by Arthur Andersen and Company. On or about September 1, 1981, he left his employment, vacated his New York City apartment and moved to New Hampshire where he was engaged in a self-employed consulting practice. Although his name remained on the apartment lease, petitioner Robert P. Palmquist paid no rent after he moved to New Hampshire. On or about August 1, 1981, petitioner Betty G. Palmquist left her employment and went to her parents' home in Santa Fe, New Mexico where, in October, she and petitioner Robert P. Palmquist were married. After their marriage, petitioner Betty G. Palmquist moved to New Hampshire to join her husband.

8. On March 25, 1981, petitioner Robert P. Palmquist and the two men with whom he shared his New York City apartment, Steve Maun and Mark Gaumond, purchased a home on Fishers Island, New York. Mr. Palmquist stayed at this home on Fishers Island almost every weekend from March through November of 1981 and also vacationed there for one or two weeks in August of 1981.

9. Upon moving to New Hampshire on or about September 1, 1981, petitioner Robert P. Palmquist obtained a New Hampshire driver's license. He maintained bank accounts in both New Hampshire and New York. For the year 1981, he neither registered to vote in New Hampshire nor voted in New York. He resided in New Hampshire for approximately two years and four months before moving to Texas where he presently resides.

10. Petitioners contend that, although their domicile changed from New York to New Hampshire during 1981, they were residents of New York on the basis that they spent more than 183 days in New York and maintained a permanent place of abode in New York pursuant to the provisions of section 605(a)(2) of the Tax Law. Petitioners maintain that both the New York City apartment and the Fishers Island home were permanent places of abode since petitioner Robert P. Palmquist continued to be obligated under the terms of the apartment lease even after he moved to New Hampshire and continued to live in the Fishers Island home after the change in domicile.

CONCLUSIONS OF LAW

A. That according to the definitions furnished by section 605 of the Tax Law and section T46-105.0 of the Administrative Code of the City of New York, a resident individual is one who is domiciled in New York State and/or the City of New York unless he or she maintains no permanent place of abode in New York State and/or the City of New York. maintains a permanent place of abode elsewhere

and spends not more than 30 days of the taxable year in the state and/or city [Tax Law section 605(a)(1); Administrative Code section T46-105.0(a)(1)]. If not domiciled in New York State and/or the City of New York, an individual may nonetheless be deemed a resident for tax purposes if he or she maintains a permanent place of abode in such state and/or city and spends more than 183 days of the taxable year in such state and/or city (unless in active service in the armed forces) [Tax Law section 605(a)(2); Administrative Code section T46-105.0(a)(2)]. In their Petition, petitioners conceded that they were not domiciled in New York for the entire year.

B. That 20 NYCRR 102.2(e)(1) provides, in pertinent part, as follows:

"A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable or used only for vacations, is not a permanent place of abode."

C. That, inasmuch as petitioners spent only weekends from March through November and one or two additional weeks during August at the home on Fishers Island during the year at issue, it is clear that petitioners did not reside at this home on a continuing basis. The home on Fishers Island is not, therefore, a permanent place of abode within the meaning of 20 NYCRR 102.2(e)(1), supra. Although petitioner Robert P. Palmquist continued to be obligated on the lease of his New York City apartment, he neither lived there nor paid rent after August 31, 1981. Pursuant to the provisions of section T46-105.0 of the Administrative Code of the City of New York, petitioners were, therefore, nonresidents of the City of New York for the last four months of 1981.

D. That, for the year at issue, petitioners were residents of the State of New York and the City of New York for the period January 1 through August 31 and were nonresidents for the balance of the year. Since a change of residence

occurred during the taxable year, they are required, pursuant to the provisions of section 654(a) of the Tax Law and section T46-154.0(a) of the Administrative Code of the City of New York, to file one return as residents for the portion of the year during which they were residents and one return as nonresidents for the portion of the year during which they were nonresidents.

E. That, for the year at issue, 20 NYCRR 148.6 provided, in pertinent part, as follows:

"Where a member of a partnership changes his status from resident to nonresident or vice versa, his distributive share of partnership income, gain, **loss** and deduction shall be included in the computation of his taxable income for the portion of the taxable year in which or with which the taxable year of the partnership ends, and treatment of his distributive share for New York income tax purposes shall be determined by his status as a resident or nonresident at such time. Such distributive share of partnership income, gain, loss and deduction is not prorated between the separate resident and nonresident returns required under this Part."

Accordingly, petitioners may not prorate partnership income or losses two-thirds to the resident period and one-third to the nonresident period. Since the partnerships involved herein are all on a calendar year basis and since petitioners were nonresidents of New York on December 31, 1981, all income and losses generated from said partnerships are attributable solely to the nonresident period (Kritzik v. Gallman, 41 A.D.2d 994).

F. That petitioner Robert P. Palmquist's distributive share of losses from partnerships amounting to \$23,275.00 cannot be deducted in computing New York source income earned in the nonresident period since said losses are not derived from or connected with New York State and New York City sources within the meaning and intent of sections 637(a)(1), 632(a)(1) and 632(b)(1) of the Tax Law and 20 NYCRR 134.1.

G. That the petition of Robert P. Palmquist and Betty G. Palmquist is denied and the notices of deficiency dated May 4, 1984 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 28 1986

PRESIDENT


COMMISSIONER


COMMISSIONER

I abstain.

Rodricher