

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

RAYMOND R. MAHABIR AND BERENICE MAHABIR

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.

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Petitioners, Raymond R. Mahabir and Berenice Mahabir, 59 Brunswick Avenue, Edison, New Jersey 08819, 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. 53251).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1986 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

### ISSUE

**Whether, for the year 1980, petitioner Raymond R. Mahabir was domiciled in New York State and New York City and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus taxable as a resident individual under Tax Law section 605(a)(1) and section T46-105.0(a)(1) of the Administrative Code of the City of New York.**

FINDINGS OF FACT

1. On November 13, 1981, the Audit Division issued a Statement of Audit Changes ("Statement") to petitioners, Raymond R. Mahabir and Berenice Mahabir, for the year 1980. Said Statement contained the following explanation:

"The fact that you maintained a permanent place of abode in New York State during 1980 makes you a domiciliary of New York State and therefore liable for New York State income tax as if you were a full year resident."

2. Based on the aforementioned Statement, the Audit Division issued two notices of deficiency ("Notice") to petitioners, one on March 22, 1983 and the other on April 13, 1984. The Notice dated March 22, 1983 proposed additional New York City personal income tax due of \$116.69, plus interest of \$28.38, for a total allegedly due of \$145.07. The Notice dated April 13, 1984 proposed additional New York State personal income tax due of \$1,372.00, plus interest of \$491.07, for a total allegedly due of \$1,863.07.

3. At a pre-hearing conference, petitioners' 1980 New York State and New York City personal income tax liability was recomputed allowing Mr. and Mrs. Mahabir to claim:

(i) a subtraction modification of \$540.00 for United States Treasury interest;

(ii) itemized deductions of \$5,046.69 in lieu of the \$2,400.00 standard deduction; and

(iii) a resident tax credit of \$609.96.

The aforementioned adjustments reduced petitioners' 1980 New York State and City income tax liability to \$957.42, plus interest.

4. During the entire 1980 tax year petitioners, Raymond Mahabir and Berenice Mahabir, were separated and living apart.<sup>1</sup> Mr. Mahabir resided in an apartment located at 59 Brunswick Avenue, Edison, New Jersey, while Mrs. Mahabir resided in an apartment located at 1365 St. Nicholas Avenue, New York, New York. It is conceded that Berenice Mahabir is taxable as a full year resident individual.

5. Petitioner Raymond R. Mahabir was employed during the year 1980 by the H. B. Fuller Company at its office in Edison, New Jersey. Mr. Mahabir performed no services for his employer within New York nor did he earn any other income which, if it is determined that he is taxable as a nonresident individual, was derived from or connected with New York State or City sources.

6. Raymond R. Mahabir's automobile has been continuously registered with the State of New Jersey since 1976. Mr. Mahabir receives all his mail at his Edison, New Jersey address and he also maintains bank accounts in both New York and New Jersey.

7. Mr. Mahabir personally prepared the 1980 Federal, New York and New Jersey income tax returns. Mr. and Mrs. Mahabir filed a joint Federal income tax return for 1980 which listed their address as 1365 St. Nicholas Avenue, Apartment 25R, New York, New York. However, said 1980 Federal income tax return also indicated, in response to information requested by the Census Bureau for revenue sharing, that residences were maintained in both New York, New York and Edison, New Jersey.

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1 Petitioners have been separated and living apart since sometime in 1976. As of the date of the hearing, petitioners had not been married since 1976.

8. Petitioners' original 1980 New York State and City income tax return was not submitted in evidence, however, it appears from the record herein that a State and City resident income tax return was filed by Mr. and Mrs. Mahabir. Mr. Mahabir contends that he erroneously prepared a resident State and City income tax return for 1980. Petitioners have submitted amended State and City income tax returns for 1980 wherein Mr. Mahabir filed as a nonresident of the State and City and Mrs. Mahabir filed as a resident. Mr. Mahabir also originally filed a 1980 nonresident tax return with the State of New Jersey and has subsequently submitted an amended return with New Jersey changing his status from nonresident to resident.

9. Pursuant to a verbal agreement, Raymond Mahabir made support payments of \$150.00 per week to Berenice Mahabir for her support and the support of their children. Other than the aforementioned support payments, Mr. Mahabir did not contribute to the maintenance of the apartment located at 1365 St. Nicholas Avenue, New York, New York. Mr. Mahabir at no time during the year at issue used the apartment in New York City as his residence or abode.

10. During the year 1980, petitioner Raymond R. Mahabir had New Jersey State income tax withheld from his wages and also \$540.58 of New York City tax withheld. Mr. Mahabir did not stop the withholding of New York City taxes from his wages because he did not want his employer to know that he was separated from his spouse. Mr. Mahabir believed that if his employer knew of his separation, such knowledge would adversely affect his chances for promotion.

#### CONCLUSIONS OF LAW

A. That during the year at issue, petitioner Raymond R. Mahabir was not a domiciliary of the State and City of New York within the meaning and intent of Tax Law §605(a)(1) or City Administrative Code §246.105-0(a)(1). Since Mr. Mahabir

did not maintain a permanent place of abode in New York and was not a domiciliary of New York, he is taxable as a nonresident individual for the 1980 tax year.

B. That during the year 1980 petitioner Raymond R. Mahabir had no income which was derived from or connected with New York State or City sources. Accordingly, Mr. Mahabir owes no State or City tax for 1980 and is entitled to a refund of the \$540.58 of New York City tax withheld from his wages.


C. That petitioner Berenice Mahabir is concededly taxable as a resident individual for the year 1980. **In** accordance with the recomputation made by the Audit Division at a pre-hearing conference (see Finding of Fact "3", supra), Mrs. Mahabir's 1980 New York State and New York City tax due totals \$1.47 and \$.91, respectively.

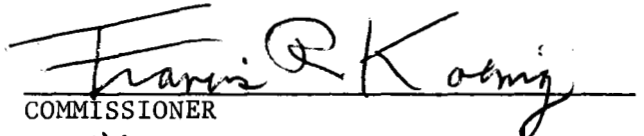
D. That the petition of Raymond R. Mahabir and Berenice Mahabir is granted to the extent indicated in Conclusions of Law "A", "B" and "C", supra; and that, except as **so** granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE **TAX** COMMISSION

MAY 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER