

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

NATHAN GRABLER and DOROTHY GRABLER

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 Nonresident Earnings Tax under Chapter 46,
Title U of the Administrative Code of the City :
of New York for the Years 1980, 1981 and 1982.

Petitioners, Nathan Grabler and Dorothy Grabler, 300 IAI Bldg. 1 #303,
Juniper, Florida 33458, filed petitions for redetermination ~~of~~ deficiencies or
for refunds of New York State personal income tax under Article 22 of the Tax
Law and New York City nonresident earnings tax under Chapter 46, Title U of the
Administrative Code of the City of New York for the years 1980, 1981 and 1982
(File No. 53911).

A hearing was held before Allen Caplowaith, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New
York, on May 21, 1985 at 1:15 P.M., with all briefs to be submitted by September 1
1985. Petitioner appeared by Robert M. Spilky, Esq. The Audit Division
appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., ~~of~~ counsel).

ISSUE

Whether petitioner Nathan Grabler may allocate his income to sources
within and without the State and City of New York.

FINDINGS OF FACT

1. Petitioners, Nathan Grabler and Dorothy Grabler, filed New York State
and New York City nonresident income tax returns for the years 1980, 1981 and

income to New York on the basis of days worked within and without the State as follows:

1980

Total days worked in year	297
Subtract days worked outside New York State	<u>221</u>
Days worked in New York State	76

New York State amount:

$\frac{76}{297}$ x \$20,701.00 (salary income)	-	$\frac{\$5,297.00}{76}$
		(Allocated to NY)

1981

Total days worked in year	296
Subtract days worked outside New York State	<u>221</u>
Days worked in New York State	75

New York State amount:

$\frac{75}{296}$ x \$27,452.00 (salary income)	-	$\frac{\$6,956.00}{75}$
		(Allocated to NY)

1982

Total days worked in year	296
Subtract days worked outside New York State	<u>221</u>
Days worked in New York State	75

New York State amount:

$\frac{75}{296}$ x \$30,105.00 (salary income)	-	$\frac{\$7,628.00}{75}$
		(Allocated to NY)

2. For New York City purposes petitioner Nathan Grabler allocated his salary income on the same basis as that used for New York State purposes.

3. Mr. Grabler's salary income for each of the years at issue was derived from the New York law firm Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005.

4. On March 6, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1982 wherein Mr. Grabler's entire salary income was held allocable to New York based on the following explanation:

"Days worked at home do not form a proper basis for allocation of income by a nonresident. Any allowance claimed for days worked outside New York State must be based upon the performance of services which, because of the necessity of the employer obligates the employee to out-of-state duties in the service of his employer. Such duties are those which by their very nature, cannot be performed in New York.

Giving effect to the above principles for purposes of the allocation formula, normal work days spent at home are considered to be days worked in New York and days spent at home which are not normal work days are considered to be nonworking days. Information submitted shows all 237 days worked out of New York were days worked at home. Therefore, days worked out of New York are reduced to 0 and total wages of \$30,105.00 are considered taxable to New York."

5. On March 15, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the years 1980 and 1981 wherein Mr. Grabler's entire salary income derived for each of said years was held allocable to New York based on an explanation substantially similar to that given for the year 1982.

6. On June 8, 1984, the Audit Division issued two (2) notices of deficiency against petitioners based on the aforestated statements of audit changes. One such notice asserted additional New York State personal income tax and New York City nonresident earnings tax of \$2,261.00 for the years 1980 and 1981, plus interest of \$723.79, for a total due of \$2,984.79. The other notice asserted additional New York State personal income tax and New York City nonresident earnings tax of \$1,176.00 for the year 1982, plus interest of \$131.93, for a total due of \$1,307.93.

7. In 1970, Nathan Grabler (hereinafter "petitioner"), an attorney, was hired by the New York City law firm of Cravath, Swaine & Moore ("the firm") as the Assistant Managing Clerk of its litigation department. On July 1, 1975, petitioner was promoted to Managing Clerk and was directly responsible for

advising the approximately one hundred (100) lawyers in the firm's litigation department on New York and federal practice and procedure.

8. As Managing Clerk, petitioner was responsible for the form and procedural correctness of every litigation document sent out by the firm. Petitioner was also charged with the duties of keeping abreast of changes in the law, being familiar with the procedural requirements of the various federal and state courts, calendar control, reviewing decisions of the various courts for those which may be of interest to the firm and overseeing the other members of the Managing Clerk's office.

9. In April 1979, petitioner and his wife decided to move to Florida because of Mrs. Grabler's circulatory problems. Petitioner conveyed this decision to his superior at the firm who was very upset at the prospect of losing petitioner's expertise many years prior to his normal retirement date and before a successor could be properly groomed to replace him. The situation was exacerbated by the Managing Clerk's critical importance to the firm.

10. In September, 1979, petitioner and his wife moved to Florida and commenced residing in an apartment which they previously maintained in said state. From the time of petitioner's decision to move, to the date of his actual move, several discussions were held between petitioner and the firm relative to his role with the firm subsequent to his move to Florida.

11. With respect to petitioner's services rendered for the firm from his Florida apartment, an oral agreement was reached whereby petitioner's assistant was promoted to the position of Managing Clerk. Petitioner was then required to maintain communication with the firm by telephone on a daily basis; spend three (3) days every other week in the firm's New York office; be available to take phone calls on procedural matters;

and analyze court opinions sent by the firm every other day to determine if such opinions contained anything useful to the firm's practice. When such useful opinions were discovered, petitioner drafted an abstract and prepared a critique, which was sent to the firm, distributed to all litigation attorneys and ultimately incorporated into a volume for easily accessible reference. For the aforesaid services petitioner's salary was reduced from \$55,000.00, which he was earning prior to his move to Florida, to \$20,000.00, which was increased on several occasions over the subsequent years.

12. Petitioner performed his research in his apartment in Florida where one room was maintained as an office and library.

13. Petitioner substituted for his successor and assumed the full duties of Managing Clerk during many of the days he spent at the firm's New York office during the years at issue herein.

14. The firm paid for all expenses incurred by petitioner on his trips to its New York office.

15. While residing in Florida, petitioner continued to be covered by the firm's medical plan, workman's compensation and unemployment insurance.

16. During each of the years at issue, the firm issued a wage and tax statement to petitioner wherein his income was characterized as employee wages.

17. Petitioner claimed that he rendered services in two separate and distinct capacities for the firm during the years at issue. One was with respect to his activities performed in Florida, which he argued were rendered as a "consultant" and accordingly, the income derived from such activities should not be held taxable to New York. The other was with respect to his time spent in New York reviewing the affairs of the Managing Clerk's office and

serving as a substitute Managing Clerk while his successor was on vacation or otherwise unavailable. Petitioner agrees that the income derived from the latter services are fully taxable to New York since such services were performed solely within New York.

18. Petitioner submitted copies of the firm's 1980 and 1985 office directories. Such directories designated petitioner as a "consultant" to the Managing Clerk's office.

CONCLUSIONS OF LAW

A. That if a nonresident employee performs services for his employer both within and without New York State, any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity - as distinguished from convenience - obligate the employee to out-of-state duties in the service of his employer. (20 NYCRR 131.16).

B. That petitioner was engaged in one employment relationship with the firm in which he provided services both within and without the State. (Colleary v. State Tax Comm., 69 AD2d 922). Since it was for the petitioner's convenience rather than the firm's necessity that his services be performed outside New York, petitioner may not allocate his income derived from such out-of-state duties to sources without New York.

C. That petitioner's salary income derived from the firm during each of the years at issue was attributable to New York State and City sources in its entirety.

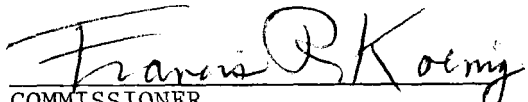
D. That the petitions of Nathan Grabler and Dorothy Grabler are denied and the two (2) notices of deficiency issued June 8, 1984 are sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER