

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CASTAGNA AND MARY CASTAGNA

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1979.

Petitioners, John Castagna and Mary Castagna, 200 West Sarah Street, Milford, Pennsylvania 18337, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1979 (File No. 54767).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1987 at 1:15 P.M. Petitioners appeared by **Miller** Ellin & Company (Hilton L. Sokol, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether, during the year 1979, petitioners were domiciled in **New York** 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 thirty days in New York, and were thus resident individuals under Tax Law § 605(a)(1).

FINDINGS OF FACT

1. Petitioners, John and Mary Castagna, filed a **U.S.** Individual Income Tax Return for the year 1979 wherein they elected a filing status of "Married filing joint return (even if only one had income)". Petitioners listed their address as being on East 8th Street in Brooklyn, New York.

2. Mr. Castagna filed a Commonwealth of Pennsylvania Individual Income Tax Return for the year 1979. On this return, Mr. Castagna reported his address as being on Sawkill Road in Milford, Pennsylvania.

3. Petitioners did not file a New York State income tax return for the year 1979.

4. On June 15, 1984, the Audit Division issued a Notice of Deficiency to petitioners asserting a deficiency of New York State and New York City personal income tax for the year 1979 in the amount of \$7,688.13, plus penalty of \$3,651.86 and interest of \$3,660.87, for a balance due of \$15,000.86. The Statement of Audit Changes, which had previously been issued, explained, in essence, that petitioners were subject to tax as residents of New York. In addition, the penalties were asserted pursuant to Tax Law §§ 685(a)(1) and 685(a)(2) for, respectively, failure to file a tax return and failure to pay the amounts shown as tax on a return required to be filed.

5. Prior to the hearing, the Audit Division consented to a reduction in the amount of tax asserted to be due based upon allowing itemized deductions of \$2,833.00 and a resident tax credit for taxes paid to the Commonwealth of Pennsylvania of \$1,264.00. As adjusted, the Audit Division asserts that there is a deficiency of New York State personal income tax in the amount of \$4,488.00 and New York City personal income tax in the amount of \$1,809.00.

b. Mr. and Mrs. Castagna were married in 1947. Following their marriage, they began living in a two-family house on East 8th Street in Brooklyn, New York. At this time, the house was apparently owned, at least in part, by Mr. Castagna's mother-in-law.

7. Prior to the year in issue, Mr. Castagna was president of a publishing company which was located in New York City. In 1975, the company filed for bankruptcy and ceased operating.

8. Mr. Castagna was unable to secure other employment immediately following the bankruptcy of the publishing company. Furthermore, at or about this time, Mr. Castagna became estranged from his wife.

9. In 1977, Mr. Castagna secured employment with Sparcomatic Corporation ("Sparcomatic") in Milford, Pennsylvania. At this time, Mr. Castagna began residing in an apartment in Milford and Mrs. Castagna began residing with her brother in New Jersey.

10. During 1977 Mr. Castagna's mother-in-law became very ill. Consequently, Mr. Castagna made frequent trips to New York City to provide assistance. In the evenings, Mr. Castagna returned to Milford and Mrs. Castagna returned to her brother's home in New Jersey.

11. The apartment which Mr. Castagna occupied in Milford was leased by Sparcomatic from a third party. Sparcomatic, in turn, sub-leased the apartment to Mr. Castagna. It was agreed between Mr. Castagna and Sparcomatic that an amount of \$250.00 per month for rent would be deducted from a year-end bonus or an equivalent amount would be applied as a reduction in a salary raise.

12. In or about the end of 1977, Mr. Castagna's mother-in-law died. Thereafter, the ownership of the house on East 8th Street in Brooklyn passed by inheritance to Mrs. Castagna and her brother and the furniture therein was given away to neighbors.

13. After the death of Mr. Castagna's mother-in-law, Mr. Castagna's son and daughter-in-law moved into the apartment which Mr. and Mrs. Castagna

formerly occupied. Since Mr. Castagna's son was a student and had little income, Mr. Castagna paid all of the bills associated with the residence.

14. During 1979 Mr. Castagna worked as the chief engineer of Sparcomatic. In this capacity, he designed and developed products. He also presented products at shows. This position required that Mr. Castagna travel approximately one-half of the year to various locations in the United States and the Far East.

15. During 1979, Mr. Castagna spent approximately ten days in New York visiting relatives on holidays.

16. During the year in issue, Mr. Castagna had savings and checking accounts with banks in Pennsylvania. He also had a brokerage account with a firm in Wilkes-Barre, Pennsylvania. Mrs. Castagna maintained a small savings account in a bank in New York.

17. During the year in issue, Mr. Castagna's automobile was registered in Pennsylvania. However, he continued to utilize a New York driver's license. Mr. Castagna explained that he kept his New York driver's license because his license was renewed automatically by his wife or his son. Furthermore, Mr. Castagna drove very little.

18. Mr. Castagna traveled a great deal and therefore it was his practice to use his Brooklyn apartment's address to receive mail. This enabled Mr. Castagna's son to be available to open mail and, if necessary, pay bills.

19. In a letter dated December 18, 1984, Mr. Castagna explained that, upon retirement, he planned on returning to New York.

CONCLUSIONS OF LAW

A. That John and Mary Castagna were domiciliaries of New York prior to the year in issue. Once a domicile is established, it continues until the

person moves to **a** new location with the bona fide intention of making his new location his fixed and permanent home (20 NYCRR 102.2[d][2]).

B. That petitioners have failed to sustain their burden of proof of establishing that in 1979 they intended to make Pennsylvania their new domicile (Tax Law § 689[e]). In reaching this conclusion, it is noted that Mr. Castagna paid all **of** the bills on an apartment in New York, that Mrs. Castagna maintained a small savings account in New York, that Mr. Castagna kept his New York driver's license, that Mr. Castagna received his mail at an apartment in New York and that Mr. Castagna intended to return to New York when he retired.

C. That, during the year 1979, Tax Law § 605(a)(1) provided, in part, that:

"[a] resident individual means an individual: (1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state".

D. That since Mr. Castagna paid all **of** the **bills on an apartment** in which he previously resided and at which he received **his** mail, he maintained **a** permanent place of abode in New York. Therefore, the Audit Division correctly determined that Mr. Castagna **was** subject to tax **as a** resident of New York

E. That the Audit Division is directed to modify the Notice of Deficiency in accordance with Finding of Fact "5".

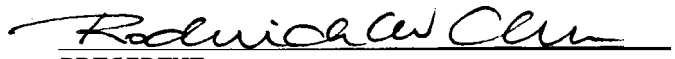
F. That the petition of John Castagna and Mary Castagna is granted only to the extent of Conclusion of Law **"E"**; that the Notice of Deficiency, issued

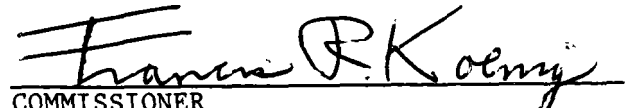
June 15, 1984, is to be modified accordingly; and that the petition is otherwise denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 28 1987


PRESIDENT


COMMISSIONER


COMMISSIONER