

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM A. GOOD AND LESLIE H. GOOD

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1979, 1980 and
1981.

Petitioners, William A. Good and Leslie H. Good, 1414 East Sycamore Avenue, El Segundo, California 90245, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979, 1980 and 1981 (File No. 56567).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1986 at 9:15 A.M., with all briefs filed by September 29, 1986. Petitioners appeared by Biller & Snyder (Lawrence Litowitz, C.P.A. and Seymour Freilich, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, William A. Good, was a New York resident for tax years 1979, 1980 and 1981, and therefore liable for additional personal income tax.

FINDINGS OF FACT

1. On July 27, 1984, the Audit Division issued notices of deficiency to petitioners, William A. Good and Leslie H. Good, asserting liability for additional personal income tax for the years 1979, 1980 and 1981 in the sum of \$10,038.73, plus penalty of \$4,211.02.

of Audit Changes was sent to petitioners under separate cover on March 26, 1984, which explained the deficiency, in part, by stating:

"All income received by a resident whether from sources within or without the State, is taxable to New York.

* * *

"Penalty for late filing, at **52** per month with a maximum of 2242, and penalty for late payment, at $\frac{1}{2}\%$ per month with a maximum of 252, have been applied (Sections 685(a)(1) and (a)(2) of the New York State Tax Law)."

2. During the period in issue, petitioner William A. Good was employed as a pilot by Braniff International, Inc. ("Braniff") whose flights originated and terminated primarily at the New York area airports of LaGuardia, Kennedy and Newark.

3. During the years in issue, petitioner Leslie H. Good was employed by Trans World Airlines ("TWA") in a supervisory capacity, stationed at Kennedy Airport in New York.

4. It is petitioners' contention that they were a two-household family, maintaining permanent places of abode in the States of Texas and New York, petitioner Leslie H. Good residing in New York and petitioner William A. Good residing in the State of Texas.

5. Petitioner William A. Good purchased an eight-unit apartment building at 7606 Eastern Avenue in Dallas, Texas on or about October 25, 1976, and consistently claimed this address to be his domicile during the period in issue.

6. It was necessary for petitioner Leslie H. Good to reside in New York since her job with TWA required her presence at Kennedy Airport a minimum of five days per week beginning in March of 1976.

7. Due to Mrs. Good's job in New York, petitioners purchased a home at 2637 Terrell Avenue in Oceanside, New York in May of 1976, which served as petitioner Leslie H. Good's domicile and residence until late 1982.

8. Petitioner William A. Good's name appears on the title for said house in Oceanside, New York and it was solely his credit rating which was determinative in acquiring a mortgage on said property.

9. Indicia of petitioner William A. Good's domicile in the State of Texas included his Texas voter registration application dated September 23, 1976, Texas driver's license, various Texas motor vehicle registrations, and the fact that he executed wills in 1976, 1978 and 1980 in which he declared that he was a resident of Dallas County, Texas.

10. Petitioner Leslie H. Good did not timely file a New York State income tax resident return or timely remit payment for the tax year 1980. Petitioner William A. Good filed only a New York State income tax nonresident return for the tax year 1979, untimely and without remittance. Petitioners filed joint Federal returns in each of the years in issue and Mrs. Good filed New York State resident income tax returns for 1979 and 1981.

11. Petitioners contend that Mr. Good spent only brief periods in the State of New York and, whenever possible, flew back to Dallas between flight assignments to perform a host of other duties for Braniff, including acting as manager of operations analysis, Concorde project engineer, member of the American Institute of Aeronautics and Aeronautics Technical Committee on Aircraft Operations; activities in the Airline Pilots Association; and Check Engineer and Flight Standards Check Engineer on the B727 aircraft.

12. Petitioners had one child during the period in issue, in 1980.

Mrs. Good and the child resided at the family's address in Oceanside, New York until September, 1982.

13. Petitioners contend that those sections of the Federal Aviation Act of 1958, as amended, which prohibit state income taxation of compensation paid to interstate air carrier employees applied to petitioner William A. Good's circumstances during the years in issue.

CONCLUSIONS OF LAW

A. That Tax Law § 689(e) provides that, in any case before the Tax Commission, the burden of proof is upon the petitioner except in specifically enumerated circumstances which are not present herein.

B. That Tax Law § 605(a) defines a resident individual as one:

"(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,... or

(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States."

C. That the evidence adduced at hearing clearly demonstrates that petitioner William A. Good was domiciled in the State of Texas during the years 1979, 1980 and 1981, but that said petitioner also maintained a permanent place of abode in the State of New York and spent in the aggregate more than 183 days of the taxable years in the State of New York.

D. That the income tax regulations at 20 NYCRR 102.2(c) provide,:

"Any person domiciled outside New York State who maintains a permanent place of abode within New York State during any taxable year, and claims to be a nonresident, must keep and have available for examination by the Tax Commission..."

that he did not spend more than 183 of such taxable year within New York State."

E. That the documentation, including but not limited to flight logs, expense receipts, payroll records, and correspondence, submitted by petitioners was neither sufficient nor credible for the purpose of substantiating that petitioner William A. Good did not spend more than 183 days for each of the taxable years in question within New York State.

F. That the petitioners' argument with regard to the alleged controlling section of the Federal Aviation Act of 1958, as amended, concerning state income taxation of compensation paid to interstate air carrier employees (49 USC § 1512) falls of its own weight since said section prohibits the state income taxation **on** compensation paid **to** interstate air carrier employees in any state other than the state of such employee's residence. The prohibition of 49 USC § 1512 **is** inapplicable since petitioner William A. Good's residence is hereby determined to **be** the State **of** New York for the period in issue.

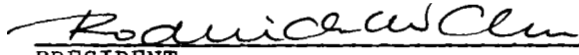
G. That petitioners have failed to show that the untimely filing of the 1979 nonresident return of Mr. Good and the 1980 resident income tax return of Mrs. Good and the untimely payment of taxes shown on the returns were due to reasonable cause. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are sustained.

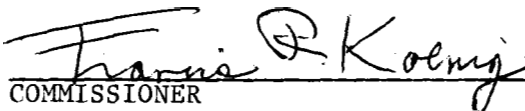
H. That the petition of William A. Good and Leslie H. Good is denied and the notices of deficiency dated July 27, 1984 are hereby sustained, together with the stated penalty and such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1987


PRESIDENT


COMMISSIONER


COMMISSIONER