

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ABUL H. **ALI**

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**.

Petitioner, Abul H. Ali, 22 Benton Court, Staten Island, New York 10306, 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. **55882**).

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 December 4, 1986 at 9:15 A.M., with all briefs to be submitted by February 4, 1987. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner effected a change of domicile and resident status to the State and City **of** New York **on** or about March **15, 1981** or was he a domiciliary and resident of New York for the entire 1981 tax year.

FINDINGS OF FACT

1. Petitioner herein, Abul **H.** Ali, together with his wife, Safia Ali, timely filed a New York State and City of New York Resident Income Tax Return

for 1981 indicating a filing status of "Married filing separately on one return". On said return, petitioner did not complete item "(B)" on page 1, indicating that a change of resident status occurred during 1981. Total New York income reported by petitioner Abul H. Ali of \$33,151.00 and by Safia Ali of \$3,645.00 did not include the sum of \$10,454.00, said amount representing wages earned by Mr. Ali while he was living and working in the State of West Virginia.

2. On June 12, 1984, the Audit Division issued a Statement of Audit Changes to petitioner and Safia Ali for the 1981 tax year. On said Statement, the Audit Division (i) increased Safia Ali's New York income by \$10,454.00; (ii) decreased petitioner Abul H. Ali's allowable New York itemized deductions from \$17,191.00 to \$12,190.00; and (iii) allocated five exemptions to petitioner and one exemption to Safia Ali.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on September 14, 1984, issued two notices of deficiency jointly to petitioner Abul H. Ali and his spouse, Safia Ali. One notice, which represented tax allegedly due from Mrs. Ali, determined additional tax of \$872.15, plus interest. The other notice, which represented tax allegedly due from Mr. Ali, assessed additional tax of \$614.70, plus interest.

4. On February 6, 1985, the Audit Division issued to petitioner Abul H. Ali a notice of claim asserting a greater deficiency for the year 1981. The notice of claim contained, ~~inter alia~~, the following explanation:

"The 1981 Notice-of Deficiency, Assessment #A8406125013, has been cancelled. This assessment was for the tax due computed as Mrs. Ali's New York State and City tax on our original Statement of Audit Changes, dated June 12, 1984.

The greater deficiency results from the following determination:

- 1) The adjustments made for the difference in Federal and State income should have been added to Mr. Ali's income, rather than Mrs. Ali's.
- 2) The total amount of State and local income taxes included in Federal itemized deductions must be subtracted in computing New York itemized deductions.
- 3) **No** change of residence or domicile was effected, as you never abandoned your New York residence, **22** Benton Court, Staten Island and established a new permanent residence elsewhere."

5. Since the Notice of Deficiency issued in the amount of **\$872.15** for taxes alleged due from Mrs. Ali has been cancelled by the Audit Division and since the notice of claim **of** a greater deficiency asserts that no additional taxes are due from Mrs. Ali, the Audit Division and Abul **H.** Ali agreed at the hearing held herein that **Mrs.** Ali is not a party to this proceeding.

6. From **1973** to October **of 1977**, petitioner and his spouse were domiciliaries and residents of the State of West Virginia. Due to changes in the conditions of his employment, petitioner resigned his position in West Virginia and moved to Staten Island, New York where he accepted employment with the State of New York. Petitioner and his family resided in a two-family house in Staten Island, New York which he had initially purchased in **1975** for investment purposes.

7. In November **of 1980**, petitioner was offered and accepted a full-time, permanent position as a staff psychiatrist with the Southern Highlands Community Mental Health Center (hereinafter "Center") in Princeton, West Virginia. Petitioner's salary at the Center was almost double the salary he was receiving in New York.

8. In mid-December of **1980**, petitioner, his wife and one of his two children vacated the house in Staten Island, New York and moved to West Virginia. The older **of** petitioner's two children remained in New York with Mrs. Ali's

sister **so** that he could finish out the school year. Petitioner and his family moved all of their personal belongings to West Virginia.

9. Petitioner did not sell the two-family house in Staten Island, New York or rent out the portion of the house that he and his family vacated because both his brother and his brother-in-law were interested in purchasing said house.

10. Upon leaving New York, petitioner (i) resigned his position with the State of New York; **(ii)** withdrew all **of** his contributions from the New York State Employees' Retirement System and terminated his membership in said System; and **(iii)** closed out all of his bank accounts in New York with the exception of one savings account which was utilized to make deposits of rental receipts received from the portion of the two-family house which was rented.

11. Once in West Virginia, petitioner and his family took up residence with ~~Mr~~ Ali's brother. Petitioner registered his automobile in West Virginia, opened bank accounts in West Virginia and began searching for a suitable house to purchase.

12. Petitioner was very close to entering into a contract for the purchase of a residence in West Virginia when he became disenchanted with his employment at the Center. Mr. Ali felt that certain representations made to him at the time he accepted employment at the Center were not being honored and, after several non-productive meetings with the executive director of the Center, petitioner tendered his resignation effective mid-March of **1981**.

13. After considering the possibility of establishing a private practice in West Virginia, petitioner elected to return to New York,. Petitioner and his family moved back to the two-family house in Staten Island, New York on or about March 15, **1981**, and Mr. Ali also returned to employment with the State **of**

New York, although not the same position he held prior to his move to West Virginia.

14. Petitioner filed an income tax return with the State of West Virginia for 1981 reporting thereon wage income of \$10,454.00 and a tax due of \$179.00.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code **of** the City of New York **is** by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That section 605(a) of the Tax Law, in pertinent part, provides:

"(a) Resident individual. A resident individual means an individual:

(1) who **is** domicile 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".

C. That "to effect a change of domicile, there must be an actual change **of** residence, coupled with an intention to abandon the former domicile and to acquire another". Aetna Nat'l. Bank v. Kramer, 142 App Div 444 (1st Dep't., 1911).

D. That "the test of intent with respect to a purported new domicile has been stated as 'whether the place **of** habitation **is** the permanent home **of** a person, with the range of sentiment, feeling and permanent association with it' (Matter of Bourne, 181 Misc 238, 246, affd. 267 App Div 876, affd 293 NY 785)." (Matter of Bodfish v. Gallman, 50 AD2d 457.)

E. That Regulations of the State Tax Commission provide:

"A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time" (20 NYCRR 102.2[d][2]).

F. That petitioner did incur a change of domicile from New York to West Virginia effective mid-December of 1980. Petitioner has established that he clearly intended to leave New York in 1980 and to move to West Virginia. Furthermore, his move to West Virginia was a permanent commitment, rather than a move for a specified period or purpose, and his work and residence in West Virginia was ended only by unforeseen complications with his West Virginia employer. Petitioner did, however, reacquire a domicile within the State and City of New York on or about March 15, 1981.

G. That petitioner was not domiciled in or taxable as a resident of New York State or New York City from January 1, 1981 through March 14, 1981. Accordingly, petitioner's 1981 New York State and City personal income tax liability is to be recomputed on the basis that he was a resident of the State and City for the period March 15, 1981 to December 31, 1981 and a nonresident of New York for the remainder of the year (see Tax Law § 654; 20 NYCRR 148.1).

H. That since petitioner had no income from New York State or City sources during the period of his nonresidence, he was not required to file a nonresident return for said period (see 20 NYCRR 148.1[b]).

I. That total New York income reported on petitioner's return (\$31,151.00) properly reflects the income earned by petitioner during the period of his New York State and City residency. However, in the computation of New York taxable income, petitioner must apportion to the resident period New York itemized deductions (\$11,806.00) and the allowance for personal exemptions (\$3,750.00). In the instant matter, it is appropriate to apportion New York itemized deductions

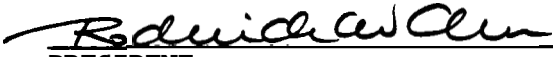
and personal exemptions based on a percentage determined by placing the number of months in the resident period (10) over the total number of months in the taxable period (12). (See 20 NYCRR 148.20[a][1].)

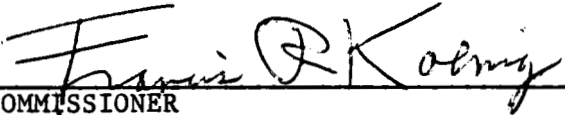
J. That the petition of Abul H. Ali is granted to the extent indicated in Conclusions of Law "G", "H" and "I", supra; that the Audit Division is directed to recompute petitioner's 1981 liability consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 26 1987


PRESIDENT


COMMISSIONER


COMMISSIONER