

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ESTATE OF FRED M. **SIGMAN**

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 Years 1979, 1980 and 1981. :

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Petitioner, Estate **of** Fred M. Sigman, c/o Butler, Jablow & Geller, 400  
Madison Avenue, New York, New York 10017, 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 years 1979,  
1980 and 1981 (File No. 55915).

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 July 16, 1986 at **2:45** P.M., with all briefs to be submitted by July 31,  
1986. Petitioner appeared by Stanley Geller, Esq. The Audit Division appeared  
by John P. Dugan, **Esq.** (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether Fred M. Sigman was a resident individual of the State and City  
of New York during the years 1979, 1980 and 1981.

II. Whether a resident tax credit **is** properly allowable for capital gains  
and dividend taxes paid to the State **of** Connecticut for taxable years 1979,  
1980 and 1981

New York State and City personal income taxes for 1979 and 1980 of \$6,297.24, plus penalty of \$94.44 and interest of \$1,843.48, for a total due of \$8,235.16. The other notice asserted additional New York State and City personal income taxes for 1981 of \$6,952.58, plus penalty of \$104.28 and interest of \$1,135.98, for a total due of \$8,192.84. The record provides no indication of the nature of **or** basis for the penalties asserted.

5. Fred **M.** Sigman died on July 30, 1982.

6. During the years at issue, the decedent was domiciled in the State of Connecticut.

7. The Estate of Fred M. Sigman (hereinafter "petitioner") conceded that the days worked by the decedent in New York were correct as reported on the 1979, 1980 and 1981 returns (see Finding of Fact "1", supra). However, petitioner contended that since the decedent worked in New York for only six (6) hours during each day and then returned to his home in Connecticut, such days should not be considered as days spent in New York for purposes **of** determining residence

8. During the years at issue, the decedent worked at his employer's office located at Lexington Avenue and **52nd** Street, New York City.

9. During the years at issue, the decedent, a single individual, resided on a continuous basis with a close friend. In addition to their home in Connecticut, they maintained a studio apartment in Manhattan, which they used approximately one day per week **for** the major portion **of** each year at issue. Said apartment, which was acquired in 1972, was used to entertain friends and to remain overnight **or** occasions when they went to dinner or the theatre in Manhattan.

10. The decedent and his friend also maintained an apartment in Palm Beach, Florida in which they **resided during holiday and vacation periods**

11. Petitioner alleged that if the decedent is deemed to be a resident of New York, he is properly entitled to a resident tax credit for capital gains and dividend taxes paid to Connecticut during the years at issue.

12. According to copies of Connecticut capital gains and dividend tax returns submitted for each year at issue, the decedent paid tax to Connecticut in 1979 in the amount of \$996.00 on dividend income received from Merrill Lynch & Co. In 1980 the decedent paid the same tax in the amount of \$1,147.00, again on dividend income received from Merrill Lynch & Co. In 1981, the decedent paid tax to Connecticut in the amount of \$1,877.00, comprised of \$1,327.00 tax on dividend income from Merrill Lynch & Co. and \$550.00 tax on capital gains from sales of securities.

### CONCLUSIONS OF LAW

A. That section 605(a) of the Tax Law provides that a resident individual means an individual:

"(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".

B. That 20 NYCRR 102.2(c) provides, in pertinent part, that:

"In counting the number of days spent within and without this State, presence within the State for any part of a calendar day constitutes a day spent within the State".

C. That the decedent's Manhattan apartment constituted a permanent place of abode maintained by him during the years 1979, 1980 and 1981. Since he spent more than 183 days in New York during each of said years, he was a resident individual of New York State during such years within the meaning and intent of section 605(a)(2) of the Tax Law and 20 NYCRR 102.2(c).

D. That section T46-105.0(a)(2) of the Administrative Code of the City of New York provides a definition for "city resident individual" which is essentially

the same as that provided for "resident individual" under section 505(a)(2) of the Tax Law. Accordingly, the decedent was a city resident individual during each of the years 1979, 1980 and 1981.

E. That section 620(a) of the Tax Law provides that:

"[a] resident: shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States ...upon income both derived therefrom and subject to tax under this article." (Emphasis supplied.)

F. That 20 NYCRR 121.4(d) (formerly 20 NYCRR 121.3[d]) provides in pertinent part as follows:

"[T]he resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction. Thus, for example, no resident credit is allowable for an income tax of another jurisdiction on dividend income not derived **from** property employed in a business, trade or profession carried on in such jurisdiction."

G. That the United States Tax Court in McGowan v. Commissioner (67 T.C. 599, 610) recently stated: "A 'tax' **is** an 'income tax' even though it is restricted to various forms of income."

H. That although the Connecticut capital gains, dividends and interest tax qualifies as an income tax, a resident tax credit is not allowable in the instant case since the decedent's capital gain and dividend income reported on his Connecticut returns did not meet the qualification set forth in Tax Law § 620(a) and 20 NYCRR 121.4(d) in that such income was not derived from Connecticut. The income was all from intangibles in the form of dividends and gains from securities, none of which was employed in a business carried on in Connecticut.


I. That the penalties asserted are hereby cancelled (see Finding of Fact "4", supra) .


J. That the petition of the Estate of Fred N. Sigman is denied and, except as provided in Conclusion of Law "I", supra, the two notices of deficiency issued April 12, 1983 are sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 27 1987:

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER