

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

HARVEY J. EDWARDS AND ALESIA H. EDWARDS

DECISION

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 Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City  
of New York for the Year 1982.

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Petitioners, Harvey J. Edwards and Alesia H. Edwards, 515 East 85th  
Street, Apt. #2E, New York, New York 10028, filed a petition 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 personal income tax under Chapter 46,  
Title T of the Administrative Code of the City of New York for the year 1982  
(File No. 56802).

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 2, 1986 at 9:15 A.M. Petitioners appeared pro se. The Audit Division  
appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

#### ISSUE

Whether petitioners were domiciled in and taxable as residents of New York  
State and New York City for the entire 1982 tax year.

#### FINDINGS OF FACT

1. Petitioners herein, Harvey J. Edwards and Alesia H. Edwards, timely  
filed a New York State and New York City resident income tax return for 1982  
wherein they elected a filing status of married filing separately on one

return. On page one of their return, petitioners computed their respective total New York incomes in the following manner:

	<u>Husband</u>	<u>Wife</u>
Total income	\$22,526.21	\$19,362.85
New York adjustments	<u>(22,526.21)</u>	<u>(21,725.55)</u>
Total New York income	-0-	-0-

The New York adjustments were explained on page two of petitioners' return as "non ~~NY~~ non-resident income".

2. On March 9, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1982 which contained, inter alia, the following explanation:

"Information available indicates that you were a resident of New York State for the entire year. Therefore, all sources of income including the nonresident income is includible on your return."

Petitioner Harvey J. Edwards' total New York income was increased by the Audit Division to \$22,771.95, while Mrs. Edwards' total New York income was increased to \$19,609.60.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on July 20, 1984, issued two notices of deficiency to petitioners for the year 1982. One notice, which represented tax allegedly due from Mrs. Edwards, determined additional tax of \$839.58, plus penalty and interest. The other notice, which represented tax allegedly due from Mr. Edwards, assessed additional tax of \$1,568.52, plus penalty and interest.

4. Prior to 1980, petitioners were domiciliaries of New York State residing in Rochester, New York. In 1980, petitioners moved to Boston, Massachusetts where Mr. Edwards took employment with the Council for Northeast Economic Action and Mrs. Edwards became an associate dean at the University of Massachusetts. Petitioners sold their home in Rochester, New York and closed out all

their bank accounts in New York. Upon their arrival in Massachusetts, petitioners leased an apartment in said state, registered to vote, opened bank accounts, obtained Massachusetts drivers' licenses and registered their automobile in Massachusetts.

5. Sometime in 1982, petitioners' daughter, a promising ballet student, was accepted into the School of American Ballet which was located in New York City. Acceptance into said school represented an excellent opportunity for petitioners' daughter to further her ballet career.

6. In order to allow their daughter the opportunity to study at the School of American Ballet, petitioner Alesia H. Edwards and her daughter moved to New York City on September 6, 1982. They initially stayed with friends in New York City until an apartment was leased at 160 East 91st Street, New York, New York effective October 1, 1982. The lease was executed by both petitioners because Mrs. Edwards had not yet found employment in New York and the landlord therefore required that Mr. Edwards also become a party to said lease.

7. Once in New York, Mrs. Edwards registered to vote and she also opened a joint checking account with her daughter. Mrs. Edwards eventually took a job with Catalyst for Women, Inc. located in New York City.

8. Petitioner Harvey J. Edwards remained living and working in Boston, Massachusetts for all of 1982. Mr. Edwards did not join his family in New York until July of 1983; however, he regularly visited his wife and daughter in New York. The primary reason Mr. Edwards did not move to New York with his family was due to the fact that he did not want to relinquish his employment in Boston, Massachusetts until such time as it was determined that his daughter was fully committed to her ballet career and that she wished to continue her studies at the School of American Ballet in New York City. Mr. Edwards had no

contractual obligation with his employer in Massachusetts and could have tendered his resignation at any time. Mr. Edwards maintained an apartment in Massachusetts for the entire 1982 tax year, was registered to vote in Massachusetts, had a Massachusetts driver's license, had his automobile registered in Massachusetts and maintained bank accounts in said state.

9. Petitioner Harvey J. Edwards performed **no** services for his employer within the State or City of New York, nor did he earn any income from New York sources during 1982. Petitioner Alesia H. Edwards, prior to September 6, 1982, earned **no** income from New York State or City sources. After September 6, 1982, Mrs. Edwards earned New York wage income of \$2,192.30; however, said income is offset by a New York business **loss** of \$724.20 and a New York moving expense deduction of \$1,728.00. Mrs. Edwards had \$209.20 of New York State and City income tax withheld from her wage income.

#### CONCLUSIONS OF LAW

A. That petitioner Alesia H. Edwards acquired a domicile within the State and City **of** New York effective September 6, 1982. Since Mrs. Edwards' total New York income for 1982 was a negative amount, **no** tax is due for said year and she is entitled to a refund **of** the \$209.20 of tax withheld from her wages.

B. That petitioner Harvey J. Edwards has established that he remained a domiciliary of the State of Massachusetts for all **of** 1982 and that he did not acquire a New York domicile **on** September 6, 1982 when his spouse and daughter moved to New York. Since Mr. Edwards had **no** income from New York sources, **no** tax is due for 1982.


C. That the petition of Harvey J. Edwards and Alesia H. Edwards is granted; that the two notices of deficiency dated July 20, 1984 are cancelled

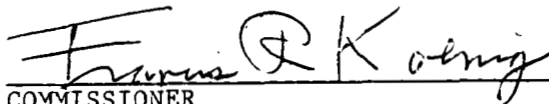
in full; and that petitioner Alesia H. Edwards is to be refunded \$209.20, plus interest.

DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER