

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

BASIL ZACHARKIW

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, Basil Zacharkiw, St. Josaphat's Retreat, Glen Cove, New York
11542, filed a petition for redetermination **of** a deficiency or for refund of
New York State personal income tax under Article **32** 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. 58288).

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
January 13, 1987 at 9:15 **A.M.** Petitioner appeared pro se. The Audit Division
appeared **by** John P. Dugan, **Esq.** (Irwin A. Levy, **Esq.**, of counsel).

ISSUES

I. Whether petitioner was a domiciliary **of** New York State who either
maintained a permanent place **of** abode in New York, spent more than 30 days in
New York or did not maintain a permanent place of abode outside the State, and
was thus taxable as a full-year resident individual.

II. Whether petitioner was taxable as a part-year resident **of** New York
City from January 1, 1981 through September 30, 1981.

FINDINGS OF FACT

1. On April 14, 1982, petitioner herein, Basil Zacharkiw, timely filed a New York State Resident Income Tax Return for 1981. On said return, petitioner reported total income of \$16,628.82 and computed a New York State tax due of \$679.00. Petitioner made no entry on his return reporting any New York City tax due. On the face of said return petitioner computed total income of \$16,628.82 in the following manner:

"2 days a week - New York State
5 days a week - out of State

2/7 x \$42,299.30	- wages and salaries	-	\$12,085.51
2/7 x \$15,901.60	- interest and dividends	-	<u>4,543.31</u>
Total Income			<u>\$16,628.82"</u>

2. On February 16, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1981 which contained the following explanation:

"Although your reply to our August 24, 1982 letter did not contain the information requested, we have determined that you were a resident of Forest Hills, New York until October 1, 1981, and a resident of Glen Cove, New York thereafter.

As a full-year resident of New York, you must report all income, regardless of source. You are subject to New York City resident tax on that portion of your income for the New York City resident period."

For New York State income tax purposes, the Audit Division increased petitioner's total income to \$58,200.90 (\$42,299.30 of wages and \$15,901.60 of interest/dividends). For New York City income tax purposes, the Audit Division computed total income of \$43,650.68 for the 9 month period that petitioner was deemed a resident of said City (9/12 x \$58,200.90).

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on November 5, 1984, issued a Notice of Deficiency to petitioner for

the year 1981. Said notice assessed additional New York State and City tax due of \$3,105.89, plus interest of \$943.71, for a total allegedly due of \$4,049.60.

4. In 1950, petitioner immigrated to the United States and took up residence with his parents in Jamaica, New York. Mr. Zacharkiw resided with his parents until sometime in the 1960's when his father passed away and his mother moved to New Jersey. At this time petitioner established his own residence in Forest Hills, New York. In October of 1981, petitioner left his residence in Forest Hills, New York and moved to St. Josaphat's Retreat, Glen Cove, New York.

5. During the year at issue, petitioner was employed as a mathematical analyst by Eastern Design Company and its successor firm, J.B.S.G. Company. Petitioner worked for a number of different employers during his career, specializing first in the nuclear industry and later moving to the aerospace industry. Throughout his career, petitioner would historically accept the most attractive employment opportunity regardless of the location and return to New York upon the termination of said employment. In petitioner's own words he "had permanent jobs which didn't last too long on account of economic trends".

6. Petitioner's employment with Eastern Design Company and its successor firm commenced in 1980 and terminated in 1982. Mr. Zacharkiw performed all of his services for said employer at a plant facility located in Stratford, Connecticut.

7. During 1981, petitioner generally spent the normal 5 day work week living and working in Stratford, Connecticut. On weekends petitioner would usually return to his apartment in Forest Hills, New York or, after October 1, 1981, to his abode in Glen Cove, New York. For all of 1981 petitioner leased, on a month-to-month basis, a one room apartment in Stratford Connecticut. The

apartments maintained by petitioner in Forest Hills, New York and later in Glen Cove, New York were also one room abodes leased on a month-to-month basis.

8. During 1931, and for some years prior thereto, petitioner was not registered to vote, did not **own** an automobile or have a driver's license, and had no will. Petitioner, in 1981, maintained bank accounts both in the State **of** New York and the State **of** Connecticut.

9. ~~When~~ petitioner's employment in Stratford, Connecticut ended in 1982 he took up full-time residence at his abode in Glen Cove, New York. Sometime thereafter he accepted employment in New Jersey, however, he commuted back and forth between Glen Cove, New York and his assignment **in** New Jersey.

CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) provides that:

"A domicile once established continues until the person in question moves to a new location with a 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"

B. That the burden of proof **is** upon petitioner to show that the necessary intention to effect a change in domicile existed (Tax Law section 689[e]).

"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' (citation omitted). The evidence to establish the required intention to effect a change in domicile must be clear and convincing" (Bodfish v. Gallman, 50 AD2d 457).

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 Natl. Bank v. Kramer, 142 AD 444).

C. That petitioner has failed to sustain his burden of proof to show that he intended to abandon his New York State domicile and to acquire a new domicile in Connecticut. Since petitioner was a New York State domiciliary for all of 1981 and since he maintained a permanent place of abode within the State and also spent in excess of 30 days within New York, he is properly taxed as a full-year resident individual of New York State pursuant to section 605(a)(1) of the Tax Law.


D. That for New York City income tax purposes, petitioner incurred a change of resident status from city resident to city nonresident effective on or about October 1, 1981 (Administrative Code § T46-154.0[a]). Furthermore, the Audit Division properly computed the income attributable to petitioner's period of New York City residency.

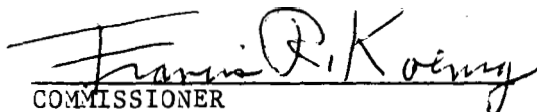
E. That the petition of Basi Zacharkiw is denied and the Notice of Deficiency dated November 5, 1984 is sustained in full, together with such additional interest as may be due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 11 1987


PRESIDENT


COMMISSIONER


COMMISSIONER