

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SHELDON GILGORE AND IRMA GILGORE

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 1982.

Petitioners, Sheldon Gilgore and Irma Gilgore, 9 Rockwell Lane, Darien, Connecticut 06820, 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 1982 (File No. 60880).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1986 at 10:45 A.M. Petitioners appeared by Wofsey, Rosen, Kweskin & Kuriansky, Esqs. (Anthony R. Lorenzo, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether petitioner Sheldon Gilgore, a domiciliary of the State of Connecticut who spent more than 183 days in the State and City of New York, maintained a permanent place of abode within New York and is thus taxable as a resident individual.

FINDINGS OF FACT

1. On May 2, 1983, petitioners, Sheldon Gilgore and Irma Gilgore, filed a joint New York State Nonresident Income Tax Return, together with a New York City nonresident earnings tax return, for the year 1982. On said returns, total wage income of \$288,025.00 earned by Sheldon Gilgore was allocated to New York State and City sources on the basis of a percentage determined by placing the number of days worked in the State and City (198) over the total number of working days (225).

2. On October 22, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1982 wherein income earned from all sources was held taxable to New York State and City based on the following explanation:

"Because you own a cooperative apartment at 201 East 37th St., New York, NY 10016 and spent more than 183 days in New York State, you are a statutory resident."

3. Based on the Statement of Audit Changes, the Audit Division, on February 26, 1985, issued a Notice of Deficiency to petitioners asserting additional New York State and City personal income tax for 1982 of \$20,520.16, plus interest of \$4,001.44, for a total of \$24,521.60.

4. Petitioners were domiciled in the State of Connecticut. Dr. Gilgore was President of Pfizer Pharmaceutical Corp. located at 235 East 42nd Street, New York, New York. Dr. Gilgore worked in New York City on a regular and continuing basis. During 1982, he worked 198 days in New York. He commuted to New York from Connecticut in his personal automobile.

5. In September 1981, petitioners purchased a studio apartment located at 201 East 37th Street, New York, New York, for the purpose of providing lodging on a temporary basis and, at the same time, the purchase was considered an investment with a view toward substantial capital appreciation.

6. Dr. Gilgore used the apartment as sleeping quarters on the average of one night per week. He would stay over on those occasions when unusually extended business matters or meetings kept him late into the evening.

7. Petitioners took the position that the apartment was not a permanent place of abode because of its infrequent use and was akin to a temporary residence such as a vacation home.

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 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 in determining whether a taxpayer spent more than 183 days in the State and City 20 NYCRR 102.2(c) provides, in part, that:

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

D. That 20 NYCRR 102.2(e)(1) defines permanent place of abode as:

"a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which **is** suitable and used only for vacations, is not a permanent place **of** abode. .

Said regulation further provides that if an individual takes an apartment in New York State and his employment assignment is not for a fixed and limited period, his New York State apartment will be deemed a permanent place of abode and he will be a resident for New York State personal income tax purposes if he spends more than 183 days of the year in New York State.


E. That petitioners, Sheldon Gilgore and Irma Gilgore, were domiciled in and maintained a permanent place of abode in the State of Connecticut. The apartment they owned in New York City also constituted a permanent place of abode as defined in 20 NYCRR 102.2(e)(1). Since petitioner Sheldon Gilgore spent in the aggregate more than 183 days during 1982 in New York he was properly taxed as a resident individual for said year.

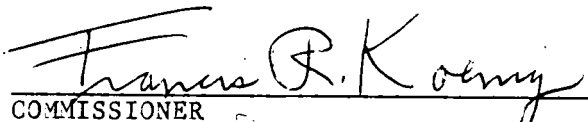
F. That the petition of Sheldon Gilgore and Irma Gilgore **is** denied **and** the Notice of Deficiency issued February 26, 1985 is sustained, together with such additional interest as may be lawfully owing.

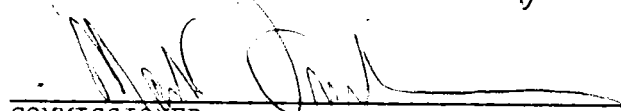
DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER