

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. BURNS

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1980.

Petitioner, Robert D. Burns, 1636 Welton Street, Denver, Colorado 80202, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 62545).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman State Office Building Campus, Albany, New York on October 21, 1986 at 9:15 A.M., with all briefs to be filed by December 8, 1986. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Michael P. Mahoney, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner **is** entitled to claim a credit on his New York income tax return for income taxes paid **to** another state after he has ceased being a resident of New York.

FINDINGS OF FACT

1. In 1979 petitioner, a New York resident, was involved in an installment sale of property located **in** the State of Colorado. The installment gain was reported **on** petitioner's 1979 Federal income tax return, New York State resident income tax return and Colorado nonresident income tax return. Petitioner claimed a credit on his New York return for taxes paid to the State of Colorado.

2. In 1980, petitioner changed his residence from the State of New York to the State of Colorado.

3. For the year 1980, petitioner filed a New York State Income Tax Nonresident Return. On the New York return, petitioner reported that he was a resident of New York City from January 1, 1980 to June 30, 1980. Petitioner did not report any part of the gain on the installment sale of the property as subject to New York State income tax.

4. Petitioner filed a Colorado Part-Year Resident and Nonresident Individual Income Tax Return for the year 1980. On this return, petitioner reported that he was a resident of Colorado from July 1, 1980 through December 31, 1980. Petitioner also reported the 1980 portion of the installment gain on the sale of the property as subject to Colorado income tax for the period of his Colorado residency.

5. On April 5, 1985, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax in the amount of \$20,841.82 plus interest of \$10,436.10 for a balance due of \$31,277.92. The Statement of Audit Changes, which was previously issued, explained that since petitioner failed to file a surety bond or collateral as required by Tax Law § 654(c)(4), the Audit Division accrued the entire gain on the installment sale of the property.

6. At the hearing, petitioner acknowledged that he was required to accrue the gain on the installment sale of the property. However, he maintained that he should be able to reduce the tax on the installment sale reportable to New York by the amount of tax he would have had to pay Colorado if he had to accrue the entire gain on the Colorado income tax return for 1980.

CONCLUSIONS OF LAW

A. That Tax Law § 620(a) provides, in part, 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, a political subdivision of such state or by the District of Columbia, upon income derived both therefrom and subject to tax under this article." (Emphasis added.)


B. That petitioner **is** not entitled to a credit for tax imposed by Colorado since there **is** no showing that Colorado imposed a tax during the period of petitioner's New York residency.

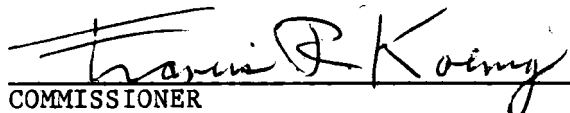
C. That the petition of Robert D. Burns **is** denied and the Notice of Deficiency dated April 5, 1985 **is** sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 26 1987


PRESIDENT


COMMISSIONER


COMMISSIONER