

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sirous H. & Khadijeh Nabavi : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976. :

State of New York
County of Albany

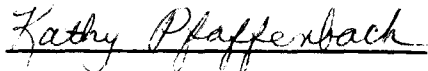
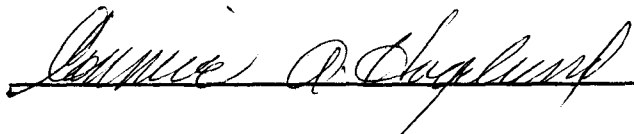
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Sirous H. & Khadijeh Nabavi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirous H. & Khadijeh Nabavi
56-20 210th St.
Oakland Gardens, NY 11364

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 29, 1983

Sirous H. & Khadijeh Nabavi
56-20 210th St.
Oakland Gardens, NY 11364

Dear Mr. & Mrs. Nabavi:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SIROUS H. NABAVI AND KHADIJEH NABAVI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles 22	:	
and 30 of the Tax Law for the Year 1976.	:	

Petitioners, Sirous H. Nabavi and Khadijeh Nabavi, 56-20 210th Street, Oakland Gardens, New York 11364, 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 Article 30 of the Tax Law for the year 1976. (File No. 30314).

A small claims 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 January 20, 1982 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether petitioners were domiciled in the State of New York and the City of New York for the entire year 1976 and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and were thus resident individuals under Tax Law section 605(a)(1).

FINDINGS OF FACT

1. Sirous H. Nabavi (hereinafter petitioner) and his wife Khadijeh Nabavi timely filed a joint New York State Income Tax Resident Return for the year

1976 whereon they indicated "6 months: NYS, 6 months overseas" and reported as New York income, only those wages earned by petitioner during the portion of 1976 subsequent to June 23rd.

2. On November 21, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein it held that they were residents of New York State and New York City for the entire year 1976. Accordingly, a Notice of Deficiency was issued against petitioners on April 14, 1980 asserting New York State personal income tax of \$397.38, New York City personal income tax of \$158.35, plus interest of \$140.63, for a total due of \$696.36.

3. Petitioners contended that they were domiciliaries and residents of Iran from January 1, 1976 through June 23, 1976.

4. Petitioner was born in Iran and resided there as a citizen until March 1969 when at the age of 43 he was transferred by his Iranian employer, Adibi Harris Associates, to their New York affiliate, Frederic R. Harris, Inc. At such time, petitioner moved to New York and resided with his wife and children in a rented apartment.

5. In October, 1971, petitioners purchased a house in the City of New York located at 84-32 57th Avenue, Elmhurst, New York where they commenced to reside with their four children.

6. On December 3, 1973, petitioner, a consulting engineer, was transferred back to Adibi Harris Associates in Tehran, Iran where he was promoted to a senior management position. Petitioner had been an employee of said firm since 1960.

7. Petitioners moved back to Iran with their youngest son. Their two other sons and daughter remained in New York and continued to reside in the Elmhurst house. Petitioner decided that the three children should remain in

New York since he believed they were sufficiently mature and he did not want to interrupt their education, which was of a higher quality than the education they would have been afforded in Iran.

8. Petitioner's daughter married at age 21 in June, 1974. His eldest son joined the United States Marines at age 19 in September, 1975. At this time only petitioner's son Reza, age 17, continued to reside in the Elmhurst house. Subsequently, a cousin also moved in.

9. Prior to petitioner's removal to Iran in December 1973, they resided in the United States as resident aliens. Petitioner testified that he didn't apply for United States citizenship since he felt it might have been a burden to him if he moved back to Iran.

10. Mrs. Nabavi was pleased with the move back to Iran since her parents lived there and she spoke very little English. She testified, through an interpreter, that at the time of the move back to Iran she "planned to live there forever".

11. Petitioner's Iranian assignment was for an indefinite period and he testified that his intent at that time was to remain in Iran permanently.

12. In Iran, petitioners leased an unfurnished apartment in Tehran, Iran. Although they wanted to purchase a house they found that they could not afford to do so. They then purchased new furniture for said apartment.

13. Petitioners purchased an automobile in Iran which Mrs. Nabavi drove under an Iranian drivers license.

14. Petitioners closed their New York bank account at the time of their removal to Iran. They opened an account in an Iranian bank from which they regularly disbursed money to their son, Reza, for payment of the mortgage on the Elmhurst house.

15. In 1975, petitioner came to New York for a short time to meet with the immigration authorities for the purpose of extending his reentry permit.

16. In March, 1976, petitioner's son Reza, who remained in New York, notified him that Newtown High School would not allow him to graduate without a legal guardian since he was "not of legal age". This necessitated petitioners' return to New York. He resigned from his employment and returned to New York with his wife and child on June 24, 1976 at which time they resumed living in their Elmhurst house.

17. Petitioner, who then had to seek new employment in New York, remained unemployed for four months subsequent to his return.

18. Petitioner has become a United States Citizen subsequent to his return to New York.

CONCLUSIONS OF LAW

A. That a resident individual means an individual who is domiciled in this state, unless 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 (section 605(a)(1) of Article 22; see section 1305(a)(1) of Article 30 which contains similar provisions with respect to a resident individual for the purpose of New York City income tax.).

B. That "(d)omicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York is domiciled here regardless of whether he has become a United States citizen or has applied for citizenship." [20 NYCRR 102.2(d)(3)]. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time [see 20 NYCRR 102.2(d)(2)].

C. That Title 8 of the United States Code, section 1203 provides in pertinent part that a reentry permit is obtained as follows:

"(a) Application, contents. (1) Any alien lawfully admitted for permanent residence, ...who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States stating the length of his intended absence or absences, and the reasons therefor. Such application shall be made under oath,...

(b) Issuance of permit; extensions. If the Attorney General finds (1) that the applicant under subsection (a)(1) has been lawfully admitted to the United States for permanent residence, ...and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, ...the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than one year from the date of issuance: Provided, that the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate.

(c) Multiple reentries. During the period of validity, such permit may be used by the alien in making one or more applications for reentry into the United States.

* * *

(e) Permit in lieu of visa. A permit issued under this section in the possession of the person to whom issued, shall be accepted in lieu of any visa which otherwise would be required from such person under this Act. Otherwise a permit issued under this section shall have no effect under the immigration laws except to show that the alien to whom it was issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning." (8 U.S.C.S. §1203) (emphasis added).

D. In view of petitioner's actions and the requirements of obtaining a reentry permit, petitioners were domiciled in the State of New York and the City of New York for the entire year 1976 within the meaning and intent of section 605(a)(1) of Article 22 and section 1305(a)(1) of Article 30. Since petitioners failed to meet all three of the conditions contained in section 605(a)(1) they are also residents of the State and City of New York for said years.

E. That the petition of Sirous H. Nabavi and Khadijeh Nabavi is denied and the Notice of Deficiency dated April 14, 1980 is hereby sustained.

DATED: Albany, New York

STATE TAX COMMISSION

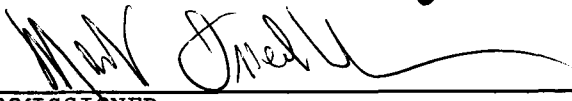
JUN 29 1983



PRESIDENT



COMMISSIONER



COMMISSIONER