

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Jack H. & Margaret W. Vaughn : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Year 1977.

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 8th day of July, 1983, she served the within notice of Decision by certified mail upon Jack H. & Margaret W. Vaughn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack H. & Margaret W. Vaughn
1905 Upshur St.
N.W. Washington, D.C. 20011

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
8th day of July, 1983.

Connie B. Hagelund

Kathy Pfaffenbach
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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State of New York
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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 8th day of July, 1983, she served the within notice of Decision by certified mail upon Richard V. D'Alessandro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
8th day of July, 1983.

Connie A. Hagelund

Kathy Plaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Jack H. & Margaret W. Vaughn
1905 Upshur St.
N.W. Washington, D.C. 20011

Dear Mr. & Mrs. Vaughn:

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 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
Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK H. AND MARGARET W. VAUGHN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioners, Jack H. and Margaret W. Vaughn, 1905 Upshur Street, N.W., Washington, D.C. 20011, 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 1977 (File No. 32776).

A formal hearing was commenced before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on August 19, 1982 at 1:15 P.M. and continued to conclusion at the same offices on September 28, 1982 at 1:00 P.M., with all briefs to be submitted by December 28, 1982. Petitioners appeared by Richard V. D'Alessandro, P.C. (Richard V. D'Alessandro, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether, during 1977, petitioners were domiciled in New York 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 section 605(a)(1) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. On October 31, 1979, petitioners, Jack H. and Margaret W. Vaughn, filed a New York State resident personal income tax return for the year 1977, reflecting New York taxable income of \$43,811.00 and a refund due them of \$2,034.00. Petitioners indicated their home address as 1905 Upshur Street, N.W., Washington, D.C. Submitted with the return were two Wage and Tax Statements issued to Mr. Vaughn, one by Planned Parenthood Federation of America, Inc. ("Planned Parenthood") and the other by Development and Resources Corporation ("D and R Corp."). Petitioners also submitted a Schedule for Change of Residence Status, allocating income and adjustments to the resident and nonresident periods, as follows:

	<u>RESIDENT PERIOD</u>	<u>NONRESIDENT PERIOD</u>
Total income	\$58,610	\$29,867
Adjustments	<u>12,494</u>	<u>5,157</u>
Balance	\$46,116	\$24,710

Income allocated to the nonresident period was salary paid to Mr. Vaughn by D and R Corp. while he was stationed in Iran. The adjustments to income consisted of alimony paid by Mr. Vaughn and unreimbursed moving expenses incurred in relocating to Iran.

On or about January 28, 1978, petitioners had applied for an extension of time within which to file their federal income tax return for the year at issue, which application was granted by the Internal Revenue Service on March 20, 1978. Petitioners stated their residence as Hasheminejad, Tehran, Iran, and their last permanent address in the United States as 175 West 72nd Street, New York, New York.

2. On March 31, 1980, the Audit Division issued to petitioners a Statement of Audit Changes, proposing a deficiency in New York State personal income tax of \$4,209.75 and a deficiency in New York City personal income tax of \$1,230.67, based upon the determination that petitioners were taxable as New York residents for the entire year. (The Audit Division also advised petitioners that a New York income tax refund received was not taxable to New York and should accordingly be subtracted at page 1, line 4.) On October 1, 1980, the Audit Division issued to petitioners a Notice of Deficiency, asserting additional New York State and New York City personal income taxes in the total amount of \$5,440.42, plus interest.

3. The hearing commenced on August 19, 1982 was continued upon the request of counsel for the Audit Division, who claimed surprise regarding petitioners' request for refund (made in their return) and their allegation that they were never domiciliaries of the State of New York.

4. In 1949, Mr. Vaughn resigned his teaching position at the University of Pennsylvania to accept a position with the United States Information Service as director of the binational center in LaPaz, Bolivia. During the period of approximately two years when he served as director, he travelled to neighboring countries but did not return to the United States. The progression of his distinguished career is summarized below.

(a) He returned to Washington, D.C., took a short vacation, and then after orientation and briefing assumed the position of director of the binational center in San Jose, Costa Rica. He remained in Costa Rica approximately one year (1951-52).

(b) Mr. Vaughn returned to Washington, D.C. in 1952, joining the Foreign Aid Agency.

(c) From 1953 through 1956, Mr. Vaughn served as an analyst with the Foreign Aid Mission in Panama City, Panama. During that period, he returned to Washington, D.C. on several occasions for consultation and home leave.

(d) Mr. Vaughn again returned to Washington, D.C. in order to receive briefing for his next assignment, as analyst with the Foreign Aid Mission in LaPaz, Bolivia, the then largest Foreign Aid Mission in the world. He remained in LaPaz for approximately a year.

(e) In 1958, Mr. Vaughn returned to Washington, D.C. to teach at the Johns Hopkins School of Advanced International Studies, where he remained for one academic year.

(f) From 1959 to 1960, Mr. Vaughn served as program officer of the Foreign Aid Agency for Europe and Africa. Though based in Washington, D.C., he travelled extensively on those continents in the course of establishing a large number of new Aid missions.

(g) In early 1960, Mr. Vaughn was assigned to Dakar, Senegal, where he was in charge of foreign aid programs in Mauritania, Mali and Senegal until September, 1961.

(h) In September, 1961, Mr. Vaughn became the first regional director for Latin America with the Peace Corps. He was based and he resided in Washington, D.C. He held that position until March, 1964 at which time he was named Ambassador to Panama (March, 1964 to the summer of 1965).

(i) In Summer, 1965, Mr. Vaughn returned to Washington, D.C. to serve as Assistant Secretary of State for Latin America, and as coordinator of the Alliance for Progress.

(j) From early 1966 until Summer, 1969, Mr. Vaughn was director of the Peace Corps in Washington, D.C. In his words, "Although my home base and my

home was Washington, D.C., I travelled about two-thirds of the time. I used to travel about a quarter of a million miles a year."

(k) In Summer, 1969, Mr. Vaughn was appointed Ambassador to Columbia.

(l) In Summer, 1970, Mr. Vaughn returned to Washington, D.C. to become president of the National Urban Coalition.

(m) For approximately five or six months (in late summer or early fall of 1971), Mr. Vaughn was Dean of International Affairs at Ford International University in Coral Gables, Florida. As requested by the president of the University, who was Mr. Vaughn's friend, Mr. Vaughn established and structured the Department of International Affairs. During this same period, Mr. Vaughn acted as consultant to Children's Television Workshop ("CTW") because he had had substantial experience in educational television during his association with the Peace Corps, and CTW was interested in expanding into the international market.

(n) In October, 1972, Mr. Vaughn was offered and accepted the job as director of international programs for CTW. According to Mr. Vaughn, "[S]ince CTW's headquarters were in New York, I moved there, although all of my activity was overseas." The first productions were in Spanish and were taped in Mexico City under Mr. Vaughn's personal supervision. He subsequently spent time in Rio de Janeiro supervising Portuguese productions, before moving on to Hamburg and other locations. During a three-year period, Mr. Vaughn helped CTW to accomplish its goal of penetrating the major foreign language markets.

(o) While employed by CTW, Mr. Vaughn conducted an evaluation for Family Planning International Assistance (a Planned Parenthood subsidiary) of its programs in the Far East. As a result of this evaluation, and due to the death of the president of Planned Parenthood, Mr. Vaughn was offered the

position of president. He entered into a three-year contract with Planned Parenthood and remained in New York, the location of Planned Parenthood's national office. During his association with Planned Parenthood, he visited all the regional offices, and every week or two visited the Washington, D.C. office, Planned Parenthood's information and lobbying center.

5. In Summer, 1977, Mr. Vaughn took the top position in D and R Corp.'s Iranian program. There was a strong inference, Mr. Vaughn stated, that if he fulfilled his obligations and duties in Iran, he would be in line for the corporate presidency (stationed in Washington, D.C.) or for a responsible position in the corporation's principal office in Sacramento, California. Mr. Vaughn relinquished the lease on petitioners' New York City apartment, shipped petitioners' excess personal and household effects to Washington, D.C. for storage, closed their account with Citibank in New York, and terminated their several charge accounts with neighborhood stores. Petitioners left the United States on July 28 or 29, 1977 and arrived in Tehran on August 1. On September 9, 1977, Mr. Vaughn filed a Certificate of Nonresidence with the City of New York and a Withholding Exemption Certificate with the state. With regard to these certificates, Mr. Vaughn testified, "It was my desire when I left New York to go overseas, to indicate officially to the city and state that I was terminating my residency in New York." A day or two after arriving in Iran, Mr. Vaughn made application for a work permit. The permit was granted on August 30, 1977, valid for one year. During the period August, 1977 through January, 1978, Mr. Vaughn returned to the United States five or six times, generally to Washington, D.C. to confer with R and D Corp.'s president or to Sacramento to attend meetings of the board of directors.

6. In Autumn, 1978, when the fall of the Shah was imminent, Mr. Vaughn returned to Washington, D.C. to attempt to convince D and R Corp. to close down its Iranian operations. Not wanting his family exposed to any danger, in November Mr. Vaughn sent his wife and two children back to Washington, D.C. to live. He remained in Iran until January, 1979, closing down D and R Corp.'s offices, winding up its affairs and ensuring that all its American employees left Iran safely. He subsequently returned to Washington, D.C. and after a vacation, joined Pierce International Ltd., a bank which he participated in founding and which is situated in Washington, D.C.

7. From 1971 to Spring, 1979, petitioners maintained a residence at 3911 Argyle Terrace, Washington, D.C. Petitioners had two bedrooms and a sitting room (in a separate wing of a larger residence) and shared other facilities, such as the kitchen and garage. Mr. Vaughn described the furnishings as those of a typical foreign service officer: some small furniture, bric-a-brac and art. Over the years he has amassed a sizable collection of pre-Columbian artifacts which, when not on loan to museums, were either displayed or stored in the Argyle Terrace residence. Petitioners rented the apartment on a month-to-month basis.

8. From October, 1972 through Summer, 1977, the period of Mr. Vaughn's association with CTW and Planned Parenthood, petitioners leased a two-bedroom apartment, with a kitchen and a combined living room-dining room, at 175 West 72nd Street, New York, New York. The furnishings were similar to those of petitioners' Washington, D.C. residence, in Mr. Vaughn's words, "cut from the same cloth".

9. Mr. Vaughn's physician, a dermatologist who has treated him since 1963 (for an injury sustained during World War II which recurs from time to time),

is located in Washington, D.C. During the period 1972 through 1977, Mr. Vaughn visited his physician on approximately 12 to 15 occasions. Petitioners' dentist, whom they visited semiannually, is similarly located in Washington, D.C. For many years, Mr. Vaughn has had his hair cut by the same barber whose shop is in Washington, D.C. And, as Mr. Vaughn testified, "As long as I can remember, I bought my clothing in Washington, D.C. in a store called Steven Windsor's Men's Store."

10. From 1970 to 1980, Mr. Vaughn was a director of Porter International, a management consulting firm and merchant bank located in Washington, D.C. He attended the quarterly-held board meetings and during 1974 and 1975 served as consultant to Kennecott Copper Corporation.

11. Since his graduation from college, Mr. Vaughn has been licensed to drive in the District of Columbia. He never possessed a New York driver's license.

12. Over the last 30 years, Mr. Vaughn has generally voted in the District of Columbia, although he could not recollect whether he had ever registered to vote in New York.

13. During the period 1972 through 1977, Mr. Vaughn maintained a checking account and rented a safety deposit box at the Union Trust Company of the District of Columbia. Union Trust Company made two loans to petitioners, one on September 24, 1971, repaid by petitioners on March 27, 1972, and the other in March, 1972, repaid by petitioners in March, 1974.

14. During the period 1972 through 1977, the only club of which Mr. Vaughn was a member was the Association of United States Information Service, a social and professional organization located in the State Department Building in Washington, D.C.

15. During the period 1972 through 1977, Mr. Vaughn regularly cared for a garden at the Argyle Terrace residence, as one of his hobbies.

16. During the period 1972 through 1977, in addition to Mr. Vaughn's journeys to Washington, D.C. on business as above-described (Findings of Fact "4(o)" and "10"), he and his wife spent most holidays at the Argyle Terrace residence. Nearly all petitioners' intimate and lifelong friends live in the Washington, D.C. area, and petitioners visited them frequently during that same period.

17. Regarding his career goal, Mr. Vaughn testified, "[M]y intent all along was to continue, if and as the circumstances warranted, with a career in foreign service of some kind." During the period 1972 through 1977 (and thereafter), he intended his home to be Washington, D.C.: "I continued, as I have over the years basically since 1949, to use Washington, D.C. as my social, professional and other residence."

18. Petitioners' federal income tax return for 1977 was audited by the Internal Revenue Service and accepted as filed without change.

CONCLUSIONS OF LAW

A. That according to the definitions furnished by section 605 of the Tax Law (as in effect during the year in question) and section T46-105.0 of the Administrative Code of the City of New York, a resident individual is one who is domiciled in New York unless he maintains no permanent place of abode in New York, maintains a permanent place of abode elsewhere and spends not more than 30 days of the taxable year in this state. Tax Law section 605(a)(1); Administrative Code section T46-105.0(a)(1). If not domiciled in New York, an individual may nonetheless be deemed a resident for tax purposes if he maintains a permanent place of abode in New York and spends more than 183 days of the

taxable year in New York (unless in active service in the armed forces). Tax Law section 605(a)(2); Administrative Code section T46-105.0(a)(2). The "548-day rule", contained in subparagraphs (i), (ii) and (iii) of Tax Law section 605(a)(1) and subparagraphs (i), (ii) and (iii) of Administrative Code section T46-105.0(a)(1), was enacted by the Laws of 1977, Chapter 675, effective August 3, 1977, and is applicable only to taxable years commencing after December 31, 1977.

B. That petitioners have failed to carry their burden, imposed by Tax Law section 689(e) and Administrative Code section T46-189.0(e), to establish that their domicile was other than New York during the year 1977 and that they intended to abandon their New York domicile upon departing for Iran. They are thus considered to have been domiciled in New York for the entirety of 1977. While petitioners assert that they were domiciliaries of Washington, D.C. for New York State and New York City personal income tax purposes, they have not demonstrated that they acted in accordance with this assertion for District of Columbia income tax purposes. The District of Columbia income tax statute defines "resident" to include every individual domiciled in the District on the last day of the taxable year. Former section 47-1551c(s) District of Columbia code. Accordingly, if petitioners were domiciled in Washington in 1977, they should have filed a tax return with and paid income tax to the District of Columbia. Matter of H. Struve Hensel, State Tax Comm., December 29, 1982.

C. That petitioners, New York domiciliaries who spent more than 30 days of the year 1977 in the City and State of New York, were residents of the City and State for personal income tax purposes, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and section T46-105.0(a)(1) of the Administrative Code.

D. That petitioners are not entitled to avail themselves of the provisions of Tax Law section 654 and Administrative Code section T46-154, to allocate their income between the periods January 1 through July 31, 1977 and August 1 through December 31, 1977. As above-stated, they were residents of the City and State for the entirety of 1977. The memorandum decision of the Third Department in Matter of Kritzik v. Gallman (41 A.D.2d 994), upon which petitioners rely, is inapposite. The taxpayers in that case were deemed residents of New York until July, 1967 under Tax Law section 605(a)(2). Upon moving to Connecticut in that month and ceasing thereafter to maintain a permanent place of abode in New York, they became nonresidents of this state and were accordingly permitted a change of status under section 654.

E. That the petition of Jack H. and Margaret W. Vaughn is denied; the Audit Division is hereby directed to recompute the Notice of Deficiency issued October 1, 1980, taking cognizance of the adjustments to income as set forth in Finding of Fact "1"; and except as so modified, the deficiency is in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983

PRESIDENT

Frank R. Koenig

COMMISSIONER

W. H. Smith

COMMISSIONER

*I dissent.
Rodrick Ascher*