

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Robert A. & Margarete Alger	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1979.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Margarete Alger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Margarete Alger
Upton Lake Road
Clinton Corners, NY 12514

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.

David Parchuck

Conrad A. D'Agostino
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert A. & Margarete Alger :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1979. :
_____ :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Robert A. Alger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert A. Alger
9343 Dover Ridge
San Antonio, TX 78250

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.

David Parchuck

Commie A. Haggerty
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

In the Matter of the Petition
of
Robert A. & Margarete Algers

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Personal Income
Tax under Article 22 of the Tax Law for the Year
1979.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Jeffry A. Giardina, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jeffrey A. Giardina
The Willows
Clinton Corners, NY 12514

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.

David Paruch

Bruce C. Haglund
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Robert A. & Margarete Alger
Upton Lake Road
Clinton Corners, NY 12514

Dear Mr. & Mrs. Alger:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Jeffrey A. Giardina
The Willows
Clinton Corners, NY 12514
Taxing Bureau's Representative

AND

Robert A. Alger
9343 Dover Ridge
San Antonio, TX 78250

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT A. AND MARGARETE ALGER : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1979. :

Petitioner, Robert A. Alger, 9343 Dover Ridge, San Antonio, Texas 78250, and petitioner Margarete Alger, Upton Lake Road, Clinton Corners, New York 12514, 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 1979 (File No. 34775).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1983 at 1:15 P.M. Petitioners appeared by Jeffry A. Giardina, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner Robert A. Alger was a New York resident individual for personal income tax purposes for the entire 1979 tax year.

FINDINGS OF FACT

1. On January 27, 1981, the Audit Division issued a Statement of Audit Changes against petitioners, Robert A. Alger and Margarete Alger,¹ alleging

¹ Margarete Alger is a party hereto solely because she is the wife of petitioner Robert A. Alger and filed a joint New York income tax return with her husband for the tax year at issue.

additional personal income tax due of \$4,834.24 plus interest. The following explanation was provided:

"Temporary removal from New York State because of employment is not considered a change of residence.

Income earned by New York State residents is taxable regardless of source. Household credit is based on household gross income computed as though you were residents of New York State for the entire year. Since you earned over \$25,000.00, no household credit may be claimed."

The Audit Division allowed petitioners a standard deduction of \$2,400.00 rather than itemized deductions.

2. On April 1, 1981, the Audit Division issued a Notice of Deficiency against petitioners alleging additional personal income tax due of \$4,834.24 plus interest.

3. Petitioners jointly filed a Form IT-201, New York State Income Tax Resident Return for 1979 on which they reported total income of \$53,404.00, from which they subtracted \$44,579.00 which represented an allocation of petitioner Robert A. Alger's income outside of New York. Petitioners justified this allocation on the return as follows:

"(B)ecause of employment (Robert A. Alger) left New York State in 1979. Total days spent in New York State amounted to 62 days."

Petitioners reported total New York income of \$8,825.00 and, after deducting an allocated share of itemized deductions and personal exemptions, New York taxable income of \$5,567.00.

4. In 1965, petitioner Robert A. Alger retired from military service and accepted a job with the Flight Safety Foundation located in New York City. The Alger family moved from Macon, Georgia to Middletown, New Jersey during 1965. In 1968, petitioner was offered employment by Command Airlines, and the Alger family relocated from their New Jersey home to a new home in LaGrange, New

York. In April of 1974, the family moved from LaGrange to an eighteenth century, five bedroom farmhouse in Clinton Corners, New York.

5. During the year at issue, petitioner Margarete Alger and petitioners' son, Christopher, lived in Clinton Corners. Since February 8, 1979, petitioner Robert A. Alger has not lived in New York. However, he spent approximately twenty to twenty-five additional days during 1979 in New York, all of which were on weekends and holidays, after moving away from New York. Petitioner Margarete Alger testified that "Christmas he (Robert A. Alger) spent at home. Easter he spent by himself."

From February 8, 1979 until the present, petitioner Robert A. Alger has lived in a series of furnished apartments in the following locations: from February, 1979 to January, 1980, Bricktown, New Jersey; from January, 1980 to July, 1980, State College, Pennsylvania; and from July, 1980 to present, San Antonio, Texas.

6. Petitioner Robert A. Alger's changes in living arrangements were job related. For twelve years, up until February, 1979, he was employed by Command Airlines as its executive vice president. In late 1978, he received an offer of employment from Sana Air, Inc.,² which, according to petitioner in his affidavit (Exhibit "1", herein), "represented a substantial improvement in remuneration and the opportunity to be the President of two small aviation companies located in Toms River, New Jersey."

² Unico Corporation of State College, Pennsylvania, owned Sana Air, Inc., a jet charter service located at Toms River, New Jersey, which, in turn, owned Ocean Aviation, Inc., a flight school and aircraft sales company. Petitioner became president of the two subsidiary corporations in February, 1979.

7. Petitioners did not place their Clinton Corners house on the market until November, 1979, since petitioners were waiting to see if Robert A. Alger would be transferred by Sana Air to State College, Pennsylvania as a result of a merger of Sana Air with Air Atlantic Airlines, Inc. The merger was consummated in late October, 1979, and petitioners began to make plans to move to State College. Fortunately, those plans to relocate the family home to State College were not consummated since petitioner, by July, 1980, had decided to leave his position with Sana Air to accept an employment offer from Fairchild Aircraft Corporation in San Antonio, Texas. Petitioners finally sold their Clinton Corners house in the summer of 1983, and at the time of the hearing planned to purchase a home in the San Antonio area.

8. Petitioner Robert A. Alger in his affidavit contends that "(s)ince February 8, 1979, I have not resided in nor considered New York as my residence or domicile."

9. Petitioner Robert A. Alger paid income tax to the State of New Jersey in the amount of \$1,048.10 for the 1979 tax year. According to his affidavit, he also registered and voted in New Jersey in 1979.

CONCLUSIONS OF LAW

A. That Tax Law §605(a) defines "resident individual" for purposes of the New York personal income tax as follows:

"A resident individual means an individual (1) 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, 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..."

Petitioners are liable for New York personal income tax on Robert A. Alger's entire 1979 income unless we conclude that Robert A. Alger became a domiciliary

of New Jersey upon his move to Bricktown, New Jersey on February 8, 1979 because it is uncontroverted that during 1979, petitioner, Robert A. Alger, spent more than thirty days in New York.

B. That 20 NYCRR 102.2(d)(2) provides as follows:

"A domicile once established continues until the person in question moves to a new location with the 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; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed..."

C. That the record is clear that petitioners became domiciliaries of New York in 1968. Petitioners argue that petitioner Robert A. Alger became a domiciliary of New Jersey on February 8, 1979 when he moved to a furnished apartment in Bricktown, New Jersey. However, the evidence does not support a conclusion that Robert A. Alger moved to Bricktown, New Jersey "with the bona fide intention of making his fixed and permanent home there." Rather, petitioners waited until November, 1979 to decide to sell their home in Clinton Corners, New York since it appeared as early as March, 1979, that Mr. Alger's job assignment to Toms River, New Jersey, which prompted his move to Bricktown, would be temporary with a job reassignment to State College, Pennsylvania in the offing. In fact, the reassignment did occur. In addition, the record is clear that the Alger family home was the eighteenth century farmhouse in Clinton Corners, New York. Robert A. Alger returned there for holidays and weekends. Therefore, we conclude that petitioner Robert A. Alger's New York domicile, which he established in 1968, was not altered upon his move to New Jersey on February 8, 1979.

D. That the Audit Division is directed to recompute the deficiency herein by allowing petitioners credit in accordance with Tax Law §620 for income tax

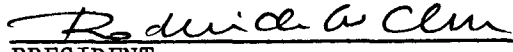
paid to New Jersey during the year at issue, as noted in Finding of Fact "9", supra, and allowing petitioners to claim itemized deductions for 1979 in lieu of the standard deduction used by the Audit Division in calculating the deficiency.

E. That the petition of Robert A. and Margarete Alger is granted to the extent noted in Conclusion of Law "D", herein, but, in all other respects, is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER