

## STATE TAX COMMISSION

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

Stephen P. & JoAnn Jacobs  
2605 Marci Lee Way  
Rancho Cordova, CA 95670

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.

David Paruch

*[Signature]*  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Stephen P. & JoAnn Jacobs  
2605 Marci Lee Way  
Rancho Cordova, CA 95670

Dear Mr. & Mrs. Jacobs:

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: Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
STEPHEN P. JACOBS and JOANN JACOBS : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1972. :

On September 5, 1978, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

Whether petitioners were residents of New York State for personal income tax purposes during 1972.

1. Petitioners, Stephen P. and JoAnn Jacobs, timely filed a New York State personal income tax return for 1972, on which they reported only the wife's wages earned in New York as being subject to personal income tax. They did not include her wages earned in California, nor did they include petitioner Stephen P. Jacob's military income earned in Georgia and in California. The

tax return showed a refund due of all New York State tax withheld from the wife's New York wages.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners on August 24, 1973. The Bureau contended that petitioners did not maintain a permanent place of abode outside New York State for the entire year; therefore, as domiciliaries of New York, they were taxable as residents on all income, wherever earned.

3. In protest of the Statement of Audit Changes, petitioners filed Form IT-113X (a claim for refund) on June 5, 1974. The Income Tax Bureau disallowed the claim for refund by the issuance of a Notice of Deficiency on July 29, 1974, for \$339.00 in personal income tax, plus \$25.88 in interest for a total of \$364.88. From this sum, the overpayment of \$71.04 shown on the tax return was subtracted, leaving an amount due of \$293.84. Petitioners subsequently filed a petition.

4. Petitioner JoAnn Jacobs was a New York resident who worked in New York until June 24, 1972, when she and petitioner Stephen P. Jacobs were married. She then moved with him to California.

5. Petitioner Stephen P. Jacobs, a resident of New York, entered active duty in the United States Air Force Reserves on May 30, 1971. On July 14, 1971 and until June of the year at issue, he was assigned to Moody Air Force Base in Georgia. During this period, he lived on the base in bachelor officer's quarters, as required by military regulations. On July 22, 1972, he was assigned to Mather Air Force Base in California, where he and his wife lived off the base until the end of the year.

6. In a letter dated January 30, 1978, petitioner Stephen P. Jacobs characterized his assignment to Moody Air Force Base as of a definite, temporary

and limited nature. The assignment was for 48 weeks of pilot training. A copy of his military orders was submitted to substantiate his assignment.

7. Petitioner Stephen P. Jacobs maintained no permanent place of abode in New York and spent less than 30 days in the State during the year at issue.

8. No evidence was submitted to show that petitioners took any steps at any time to effect a change of domicile to any other state.

#### CONCLUSIONS OF LAW

A. That any person domiciled in New York is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements: (1) he maintains no permanent place of abode in this State during such year, (2) he maintains a permanent place of abode elsewhere during such entire year, and (3) he spends in the aggregate not more than 30 days of the taxable year in the State (20 NYCRR 102.2(b) and section 605(a)(1) of the Tax Law).

B. That a place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose (20 NYCRR 102.2(e)). Although petitioner Stephen P. Jacobs may have established a permanent residence in California for some part of 1972, that state of facts applied through only part of the year, and certainly cannot be used as a basis for non-residency under section 605 of the Tax Law. Petitioner Stephen P. Jacobs has not offered sufficient evidence on which to base a conclusion that his residence in Georgia was anything other than a temporary residence. In fact, petitioner Stephen P. Jacobs has made assertions indicating that such residence was indeed not a permanent residence. Accordingly, he was a domiciliary and resident of New York State, since he did not satisfy all three requirements of section 605(a)(1) of the Tax Law.

C. That petitioner JoAnn Jacobs was a domiciliary of New York State during 1972. During this period, she did not satisfy all three requirements, which would enable her to be a nonresident of New York for income tax purposes; therefore, all her income from all sources for the entire year is subject to New York State tax, in accordance with section 612 of the Tax Law.

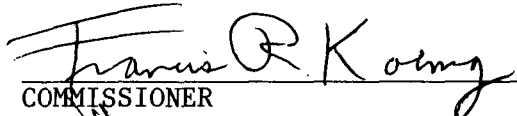
D. That the petition of Stephen P. Jacobs and JoAnn Jacobs is denied and the Notice of Deficiency dated July 29, 1974 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER