

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Habib & Josephine Rahme :
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 Years :
1974 - 1977. :
:

AFFIDAVIT OF MAILING

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Habib & Josephine Rahme, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Habib & Josephine Rahme
10223 Blake Lane
Oakton, VA 22124

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
7th day of November, 1985.

David Parchuck

Conni A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

Habib & Josephine Rahme
10223 Blake Lane
Oakton, VA 22124

Dear Mr. & Mrs. Rahme:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HABIB RAHME	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 through 1977.	:	

Petitioner, Habib Rahme, 10223 Blake Lane, Oakton, Virginia 22124, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 through 1977 (File No. 33742).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on April 26, 1985 at 10:30 A.M., with additional evidence to be submitted by May 24, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner was a resident of New York State within the meaning and intent of section 605 of the Tax Law, during the year 1974.

II. Whether any of petitioner's 1974 income is taxable for New York State personal income tax purposes.

FINDINGS OF FACT

1. Habib Rahme (hereinafter "petitioner") did not file a New York State income tax return for the year 1974.¹

2. On September 12, 1978, a Statement of Audit Changes was issued to petitioner and Josephine Rahme which computed their 1974 and 1975 New York State personal income tax liability on the basis of information on file with the Audit Division. The Statement of Audit Changes explained that:

"Based on information available Mr. Rahme is being held to be a resident of New York State for the tax years 1974 and 1975. Based on income of both spouses, Mr. Rahme is apparently maintaining a home within New York State and has no other permanent domicile except the one in New York State. Several other factors were also taken into account in this decision."

As stated in the footnote to Finding of Fact "1" herein, all issues regarding the New York State personal income tax liability of Josephine Rahme were resolved prior to this hearing and the only matter remaining in issue is petitioner's New York State personal income tax liability for the year 1974.

3. On March 11, 1981, the Audit Division issued to petitioner a Notice of Deficiency in the amount of \$1,197.67, plus penalties and interest, for the year 1974. At a pre-hearing conference, the amount of tax due was reduced to \$1,138.87, plus penalties and interest.

4. Prior to the period at issue herein, petitioner resided with his wife, Josephine Rahme, at 40 Meadowbrook Road, Syosset, New York. Said property

1 Initially, a Perfected Petition was filed by and a Notice of Hearing issued to Habib Rahme and Josephine Rahme, his wife, for the years 1974 through 1977. All issues regarding Josephine Rahme were resolved prior to hearing. At a pre-hearing conference, matters pertaining to Habib Rahme's New York State personal income tax liability for the years 1975 through 1977 were resolved. Petitioner Habib Rahme agreed that the only remaining issue was his New York State personal income tax liability for the year 1974.

had been purchased by Josephine Rahme on August 24, 1965. Petitioner's name does not appear on the deed to said property. Petitioner had been in contact about a job with Dames & Moore, a company that had been contemplating starting an office in the Middle East. However, the Board of Directors of said company kept postponing a final decision regarding this Middle East commitment. In the interim, petitioner was contacted by the NUS Corporation of Rockville, Maryland, regarding a position with this corporation.

5. In June, 1973, petitioner separated from his wife and left New York State with the intention of not returning thereto. Petitioner rented a house at 109 Chestnut Street, Gaithersburg, Maryland from June, 1973 until July, 1974 and was employed by NUS Corporation, Rockville, Maryland from June 25, 1973 to July 31, 1974.

6. On August 1, 1974, petitioner was hired by Dames & Moore of Cranford, New Jersey. Petitioner rented an apartment in New Jersey and worked at the Cranford, New Jersey office of Dames & Moore until early 1975, when he was reassigned to the Middle East to establish an office for Dames & Moore. Dames & Moore had offered permanent employment to petitioner who fully intended to establish permanent residence in Lebanon, the country of his birth. However, due to political unrest and a war which began within six or seven weeks after petitioner arrived in Beirut, Lebanon, petitioner returned to the United States in late 1975. Upon his return, petitioner rented a house in Reading, Pennsylvania and took employment with the Gilbert Company, working on energy and environmental problems. Since his departure in 1973, petitioner has maintained no permanent place of abode in New York and, until 1984 when he took a temporary consultant position at the State Department of Environmental Conservation in the Jamestown area, petitioner did not work in New York.

7. During the year 1974, petitioner neither resided in nor worked in the State of New York. Petitioner paid state income taxes to Maryland and New Jersey. During the year at issue, petitioner owned no real property in New York, did not vote in New York, maintained no bank accounts in New York, other than a joint account with his wife in Syosset in which all funds were deposited by his wife, and did not renew his New York State driver's license.

CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d), in effect for the year at issue, provides, in pertinent part:

"(d) Domicile. (1) Domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent.

(2) 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. In determining an individual's intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place."

B. That petitioner, in moving from Syosset, New York to Gaithersburg, Maryland in June, 1973, did not have the bona fide intention of making his fixed and permanent home in Maryland. His subsequent move to New Jersey in August, 1974 was with the intent to remain in New Jersey for a limited time only. Petitioner did not effect a change of domicile from New York to either Maryland or New Jersey in 1974. Therefore, petitioner continued to be domiciled in New York for the year 1974.

C. That section 605(a) of the Tax Law, in effect for the year at issue, provides, in pertinent part:

"(a) Resident individual. 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..."

D. That 20 NYCRR 102.2(e), in effect for the year at issue, provides:

"(e) Permanent place of abode. A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode. Also, 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. For example, an individual domiciled in another State may be assigned to his employer's New York office for a fixed and limited period, after which he is to return to his permanent location. If such an individual takes an apartment in New York during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in New York, because his place of abode here is not permanent. He will, of course, be taxable as a nonresident on his income from New York sources, including his salary or other compensation for services performed in New York. However, if his assignment to his employer's New York office is not for a fixed or limited period, his New York apartment will be deemed a permanent place of abode and he will be a resident for tax purposes if he spends more than 183 days of the year in New York.

In the case of a person domiciled in New York, the maintenance of a permanent place of abode in this State is alone sufficient to make him a resident for tax purposes, even though he remains outside the State for the entire year; the 183-day rule applies only to taxpayers who are not domiciled in New York."

E. That petitioner maintained a permanent place of abode in Maryland from January 1 through July 31, 1974 and in New Jersey for the balance of the year 1974. Since he maintained no permanent place of abode in New York and spent not more than thirty days in New York during the year 1974, petitioner was not

a resident of New York State within the meaning and intent of section 605(a) of the Tax Law.

F. That the New York adjusted gross income of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into his Federal adjusted gross income, but only if, and to the extent that, his services were rendered within this State [20 NYCRR 131.4(b)].


G. That petitioner's sole income in 1974 was derived from his employment with NUS Corporation of Rockville, Maryland and Dames & Moore of Cranford, New Jersey and, therefore, was not derived from or connected with New York sources. Accordingly, such income is not taxable for New York State personal income tax purposes within the meaning and intent of section 632 of the Tax Law.

H. That the petition of Habib Rahme is hereby granted and the Notice of Deficiency issued March 11, 1981 is cancelled in full.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER