

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

June 12, 1986

Neil Koppel
201 East 37th St.
New York, NY 10016

Dear Mr. Koppel:

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, 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Gary Aaronson
Shechet, Haskin & Co.
274 Madison Ave.
New York, NY 10016

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NEIL KOPPEL	:	DECISION
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 1978.	:	

Petitioner, Neil Koppel, 201 East 37th Street, New York, New York 10016, 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 1978 (File No. 39723).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 1:15 P.M., with all briefs to be submitted by February 5, 1986. Petitioner appeared by Gary Aaronson, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether petitioner changed his domicile from the State and City of New York to the State of Georgia effective June 1, 1978.

II. Whether petitioner has substantiated that he is entitled to deduct a loss of \$7,500.00 for Internal Revenue Code section 1244 stock deemed worthless in 1978.

III. Whether petitioner has substantiated that he is entitled to a \$1,500.00 net operating loss carryforward from the year 1977 to the year at issue.

FINDINGS OF FACT

1. On August 22, 1980, petitioner, Neil Koppel, filed a New York State and City income tax resident return for the year 1978. Pursuant to a schedule appended to said return petitioner indicated that he:

"...was a resident of New York from the period 1/1/78 thru 5/78. At that time taxpayer moved to Georgia where he took up permanent residency (acquired residence). While in Georgia he continued working for the same company. Taxpayer sold his Georgia residence during October 1978 and moved back to New York..."

2. On his 1978 return, petitioner reported total New York income of \$2,382.00. Said amount was computed in the following manner:

Wages	\$7,650.00
Business income	3,732.00
Other income	<u>(9,000.00)</u>
Total New York income	<u>\$2,382.00</u>

Petitioner's return also indicated that \$14,598.00 of wage income was earned during the period he was a nonresident of New York and that none of the \$14,598.00 was derived from or connected with New York sources.

3. Pursuant to letters dated August 21, 1981 and November 27, 1981, the Audit Division requested that petitioner provide substantiation to support his claimed change of domicile to Georgia and also a detailed explanation of the \$9,000.00 loss. Petitioner failed to respond to either of the aforementioned letters.

4. On April 12, 1982, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1978 which contained the following explanation:

"Since you did not send the information requested in our letters of August 21, 1981 and November 27, 1981 we have considered you to be a resident of New York for the entire taxable year 1978. In addition we have disallowed your \$9,000.00 other loss as unsubstantiated."

Petitioner's total New York income for 1978 was recomputed by the Audit Division in the following manner:

Reported total New York income	\$ 2,382.00
Add: wages earned in nonresident period	14,598.00
disallowed other loss	9,000.00
Revised total New York income	<u>\$25,980.00</u>

5. Based on the aforementioned Statement of Audit Changes, the Audit Division issued two notices of deficiency to petitioner for the year 1978. The first notice was dated July 15, 1982 and asserted additional New York City income tax due of \$382.35, plus penalty¹ of \$95.59 and interest of \$123.30, for a total allegedly due of \$601.24. The second notice was dated August 26, 1982 and asserted additional New York State income tax due of \$1,230.90, plus penalty² of \$307.72 and interest of \$416.08, for a total allegedly due of \$1,954.70.

6. Both prior to and during the year at issue, petitioner was employed by a corporation known as Fabrics R Us ("Fabrics"). Petitioner was also an officer and shareholder in Fabrics. Fabrics was engaged in business as a textile jobber and it conducted a good portion of its business with companies located in the southern part of the United States. In the latter part of 1977, petitioner and the president of Fabrics decided it would be in Fabrics' best interest if it opened an office in the southern part of the United States. To

1 Penalty was asserted pursuant to subsection (a)(1) of section T46-185.0 of the Administrative Code of the City of New York for failure to file the 1978 return on time.

2 Penalty was asserted pursuant to subsection (a)(1) of section 685 of the Tax Law for failure to file the 1978 return on time.

this end, petitioner, in late December of 1977 or early January of 1978, moved to Atlanta, Georgia to start and run a division of Fabrics known as Fabrics R Us Southern, Inc.

7. On or about May 25, 1978, petitioner purchased a condominium in Marietta, Georgia. Prior to his purchase of the condominium petitioner resided with friends or in temporary lodgings.³ On May 30, 1978, petitioner opened a checking account with the Fulton National Bank in Atlanta, Georgia.

8. In October, 1978, Fabrics was closed by its creditors as it was unable to meet its current obligations. After the closing of Fabrics, petitioner returned to New York City. The record does not disclose the exact date that petitioner returned to New York City.

9. Prior to moving to Georgia, petitioner maintained an apartment located at 201 East 37th Street, New York, New York. While petitioner was living in Georgia he continued to maintain this apartment and, in fact, returned to this same apartment sometime between October 1, 1978 and December 31, 1978.

10. Petitioner submitted in evidence a photostatic copy of his 1978 Georgia individual income tax return. Said return indicated that Mr. Koppel was a part-year resident of Georgia from June 1, 1978 to October 1, 1978. Said return also showed a balance due of \$456.00. The return submitted in evidence was not signed nor was any evidence presented to show that the balance due of \$456.00 was paid.

11. Petitioner, although currently residing in New York City, did not appear at the hearing held herein to offer his testimony.

3 The record does not disclose what form of temporary lodgings petitioner utilized, however, it is presumed that said temporary lodgings were in the nature of hotels, motels, etc.

12. During the year 1977, petitioner incurred a net operating loss of \$1,500.00. Petitioner elected, pursuant to section 172(b) of the Internal Revenue Code, to relinquish any carryback of said net operating loss to earlier tax years and to carryover said loss to succeeding tax years (1978).

13. Prior to or during the year at issue, petitioner made a capital investment of \$7,500.00 in Fabrics. In return for the \$7,500.00 investment, Fabrics issued to petitioner its common stock which qualified as Internal Revenue Code section 1244 stock. Said stock was rendered worthless in October, 1978 when Fabrics was forced into bankruptcy by its creditors.

14. Petitioner presented no argument or evidence with respect to the late filing penalties asserted pursuant to Tax Law §685(a)(1) and Administrative Code §T46-185.0(a)(1).

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code both place the burden of proof on petitioner except in three specifically enumerated instances, none of which are at issue herein. Petitioner has failed to sustain his burden of proof to show that he relinquished his domicile in New York City and established a new domicile in Georgia [20 NYCRR 102.2(d)]. Accordingly, petitioner is considered domiciled in New York State and City and, since he maintained a permanent place of abode in New York and spent more than 30 days in the State and City, is taxable as a resident individual pursuant to Tax Law §605(a)(1) and Administrative Code §T46-185.0(a)(1).


B. That petitioner has sustained his burden of proof to show that he is entitled to a \$1,500.00 net operating loss carryover deduction and a \$7,500.00 ordinary loss deduction on the worthlessness of the section 1244 stock issued by Fabrics.

C. That the petition of Neil Koppel is granted to the extent indicated in Conclusion of Law "B", supra; that the Audit Division is directed to recompute the notices of deficiency dated July 15, 1982 and August 26, 1982 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER