

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Abul H. Ali :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS 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 1981.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 26th day of May, 1987, he/she served the within notice of Decision by certified mail upon Abul H. Ali the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abul H. Ali
22 Benton Court
Staten Island, NY 10306

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
26th day of May, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

May 26, 1987

Abul H. Ali
22 Benton Court
Staten Island, NY 10306

Dear Mr. Ali:

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ABUL H. ALI

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 1981.

Petitioner, Abul H. Ali, 22 Benton Court, Staten Island, New York 10306, 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 1981 (File No. 55882).

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 December 4, 1986 at 9:15 A.M., with all briefs to be submitted by February 4, 1987. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner effected a change of domicile and resident status to the State and City of New York on or about March 15, 1981 or was he a domiciliary and resident of New York for the entire 1981 tax year.

FINDINGS OF FACT

1. Petitioner herein, Abul H. Ali, together with his wife, Safia Ali, timely filed a New York State and City of New York Resident Income Tax Return

for 1981 indicating a filing status of "Married filing separately on one return". On said return, petitioner did not complete item "(B)" on page 1, indicating that a change of resident status occurred during 1981. Total New York income reported by petitioner Abul H. Ali of \$33,151.00 and by Safia Ali of \$3,645.00 did not include the sum of \$10,454.00, said amount representing wages earned by Mr. Ali while he was living and working in the State of West Virginia.

2. On June 12, 1984, the Audit Division issued a Statement of Audit Changes to petitioner and Safia Ali for the 1981 tax year. On said Statement, the Audit Division (i) increased Safia Ali's New York income by \$10,454.00; (ii) decreased petitioner Abul H. Ali's allowable New York itemized deductions from \$17,191.00 to \$12,190.00; and (iii) allocated five exemptions to petitioner and one exemption to Safia Ali.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on September 14, 1984, issued two notices of deficiency jointly to petitioner Abul H. Ali and his spouse, Safia Ali. One notice, which represented tax allegedly due from Mrs. Ali, determined additional tax of \$872.15, plus interest. The other notice, which represented tax allegedly due from Mr. Ali, assessed additional tax of \$614.70, plus interest.

4. On February 6, 1985, the Audit Division issued to petitioner Abul H. Ali a notice of claim asserting a greater deficiency for the year 1981. The notice of claim contained, inter alia, the following explanation:

"The 1981 Notice of Deficiency, Assessment #A8406125013, has been cancelled. This assessment was for the tax due computed as Mrs. Ali's New York State and City tax on our original Statement of Audit Changes, dated June 12, 1984.

The greater deficiency results from the following determination:

- 1) The adjustments made for the difference in Federal and State income should have been added to Mr. Ali's income, rather than Mrs. Ali's.
- 2) The total amount of State and local income taxes included in Federal itemized deductions must be subtracted in computing New York itemized deductions.
- 3) No change of residence or domicile was effected, as you never abandoned your New York residence, 22 Benton Court, Staten Island and established a new permanent residence elsewhere."

5. Since the Notice of Deficiency issued in the amount of \$872.15 for taxes alleged due from Mrs. Ali has been cancelled by the Audit Division and since the notice of claim of a greater deficiency asserts that no additional taxes are due from Mrs. Ali, the Audit Division and Abul H. Ali agreed at the hearing held herein that Mrs. Ali is not a party to this proceeding.

6. From 1973 to October of 1977, petitioner and his spouse were domiciliaries and residents of the State of West Virginia. Due to changes in the conditions of his employment, petitioner resigned his position in West Virginia and moved to Staten Island, New York where he accepted employment with the State of New York. Petitioner and his family resided in a two-family house in Staten Island, New York which he had initially purchased in 1975 for investment purposes.

7. In November of 1980, petitioner was offered and accepted a full-time, permanent position as a staff psychiatrist with the Southern Highlands Community Mental Health Center (hereinafter "Center") in Princeton, West Virginia. Petitioner's salary at the Center was almost double the salary he was receiving in New York.

8. In mid-December of 1980, petitioner, his wife and one of his two children vacated the house in Staten Island, New York and moved to West Virginia. The older of petitioner's two children remained in New York with Mrs. Ali's

sister so that he could finish out the school year. Petitioner and his family moved all of their personal belongings to West Virginia.

9. Petitioner did not sell the two-family house in Staten Island, New York or rent out the portion of the house that he and his family vacated because both his brother and his brother-in-law were interested in purchasing said house.

10. Upon leaving New York, petitioner (i) resigned his position with the State of New York; (ii) withdrew all of his contributions from the New York State Employees' Retirement System and terminated his membership in said System; and (iii) closed out all of his bank accounts in New York with the exception of one savings account which was utilized to make deposits of rental receipts received from the portion of the two-family house which was rented.

11. Once in West Virginia, petitioner and his family took up residence with Mrs. Ali's brother. Petitioner registered his automobile in West Virginia, opened bank accounts in West Virginia and began searching for a suitable house to purchase.

12. Petitioner was very close to entering into a contract for the purchase of a residence in West Virginia when he became disenchanted with his employment at the Center. Mr. Ali felt that certain representations made to him at the time he accepted employment at the Center were not being honored and, after several non-productive meetings with the executive director of the Center, petitioner tendered his resignation effective mid-March of 1981.

13. After considering the possibility of establishing a private practice in West Virginia, petitioner elected to return to New York. Petitioner and his family moved back to the two-family house in Staten Island, New York on or about March 15, 1981, and Mr. Ali also returned to employment with the State of

New York, although not the same position he held prior to his move to West Virginia.

14. Petitioner filed an income tax return with the State of West Virginia for 1981 reporting thereon wage income of \$10,454.00 and a tax due of \$179.00.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That section 605(a) of the Tax Law, in pertinent part, provides:

"(a) Resident individual. A resident individual means an individual:

(1) who is domicile in this state, unless (A) 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".

C. That "to effect a change of domicile, there must be an actual change of residence, coupled with an intention to abandon the former domicile and to acquire another". Aetna Nat'l. Bank v. Kramer, 142 App Div 444 (1st Dep't., 1911).

D. That "the test of intent with respect to a purported new domicile has been stated as 'whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it' (Matter of Bourne, 181 Misc 238, 246, affd. 267 App Div 876, affd 293 NY 785)." (Matter of Bodfish v. Gallman, 50 AD2d 457.)

E. That Regulations of the State Tax Commission provide:

"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" (20 NYCRR 102.2[d][2]).

F. That petitioner did incur a change of domicile from New York to West Virginia effective mid-December of 1980. Petitioner has established that he clearly intended to leave New York in 1980 and to move to West Virginia. Furthermore, his move to West Virginia was a permanent commitment, rather than a move for a specified period or purpose, and his work and residence in West Virginia was ended only by unforeseen complications with his West Virginia employer. Petitioner did, however, reacquire a domicile within the State and City of New York on or about March 15, 1981.

G. That petitioner was not domiciled in or taxable as a resident of New York State or New York City from January 1, 1981 through March 14, 1981. Accordingly, petitioner's 1981 New York State and City personal income tax liability is to be recomputed on the basis that he was a resident of the State and City for the period March 15, 1981 to December 31, 1981 and a nonresident of New York for the remainder of the year (see Tax Law § 654; 20 NYCRR 148.1).

H. That since petitioner had no income from New York State or City sources during the period of his nonresidence, he was not required to file a nonresident return for said period (see 20 NYCRR 148.1[b]).

I. That total New York income reported on petitioner's return (\$31,151.00) properly reflects the income earned by petitioner during the period of his New York State and City residency. However, in the computation of New York taxable income, petitioner must apportion to the resident period New York itemized deductions (\$11,806.00) and the allowance for personal exemptions (\$3,750.00). In the instant matter, it is appropriate to apportion New York itemized deductions

and personal exemptions based on a percentage determined by placing the number of months in the resident period (10) over the total number of months in the taxable period (12). (See 20 NYCRR 148.20[a][1].)

J. That the petition of Abul H. Ali is granted to the extent indicated in Conclusions of Law "G", "H" and "I", supra; that the Audit Division is directed to recompute petitioner's 1981 liability 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

MAY 26 1987

Rodrick W. Allen
PRESIDENT

Francis R. Kolm
COMMISSIONER

W. H. Jones
COMMISSIONER