

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Basil Zacharkiw : AFFIDAVIT OF MAILING  
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. :  
:

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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 17th day of April, 1987, he/she served the within notice of Decision by certified mail upon Basil Zacharkiw the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

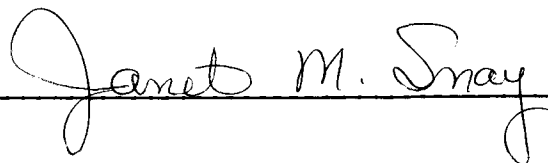
Basil Zacharkiw  
St. Josaphats Retreat  
Glen Cove, NY 11542

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  
17th day of April, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

April 17, 1987

Basil Zacharkiw  
St. Josaphats Retreat  
Glen Cove, NY 11542

Dear Mr. Zacharkiw:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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

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BASIL ZACHARKIW	:	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	:	
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Title T of the Administrative Code of the City	:	
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Petitioner, Basil Zacharkiw, St. Josaphat's Retreat, Glen Cove, New York 11542, 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. 58288).

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 January 13, 1987 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether petitioner was a domiciliary of New York State who either maintained a permanent place of abode in New York, spent more than 30 days in New York or did not maintain a permanent place of abode outside the State, and was thus taxable as a full-year resident individual.

II. Whether petitioner was taxable as a part-year resident of New York City from January 1, 1981 through September 30, 1981.

FINDINGS OF FACT

1. On April 14, 1982, petitioner herein, Basil Zacharkiw, timely filed a New York State Resident Income Tax Return for 1981. On said return, petitioner reported total income of \$16,628.82 and computed a New York State tax due of \$679.00. Petitioner made no entry on his return reporting any New York City tax due. On the face of said return petitioner computed total income of \$16,628.82 in the following manner:

"2 days a week - New York State  
5 days a week - out of State

2/7 x \$42,299.30 - wages and salaries	=	\$12,085.51
2/7 x \$15,901.60 - interest and dividends	=	4,543.31
Total Income		<u>\$16,628.82"</u>

2. On February 16, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1981 which contained the following explanation:

"Although your reply to our August 24, 1982 letter did not contain the information requested, we have determined that you were a resident of Forest Hills, New York until October 1, 1981, and a resident of Glen Cove, New York thereafter.

As a full-year resident of New York, you must report all income, regardless of source. You are subject to New York City resident tax on that portion of your income for the New York City resident period."

For New York State income tax purposes, the Audit Division increased petitioner's total income to \$58,200.90 (\$42,299.30 of wages and \$15,901.60 of interest/dividends). For New York City income tax purposes, the Audit Division computed total income of \$43,650.68 for the 9 month period that petitioner was deemed a resident of said City (9/12 x \$58,200.90).

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on November 5, 1984, issued a Notice of Deficiency to petitioner for

the year 1981. Said notice assessed additional New York State and City tax due of \$3,105.89, plus interest of \$943.71, for a total allegedly due of \$4,049.60.

4. In 1950, petitioner immigrated to the United States and took up residence with his parents in Jamaica, New York. Mr. Zacharkiw resided with his parents until sometime in the 1960's when his father passed away and his mother moved to New Jersey. At this time petitioner established his own residence in Forest Hills, New York. In October of 1981, petitioner left his residence in Forest Hills, New York and moved to St. Josaphat's Retreat, Glen Cove, New York.

5. During the year at issue, petitioner was employed as a mathematical analyst by Eastern Design Company and its successor firm, J.B.S.G. Company. Petitioner worked for a number of different employers during his career, specializing first in the nuclear industry and later moving to the aerospace industry. Throughout his career, petitioner would historically accept the most attractive employment opportunity regardless of the location and return to New York upon the termination of said employment. In petitioner's own words he "had permanent jobs which didn't last too long on account of economic trends".

6. Petitioner's employment with Eastern Design Company and its successor firm commenced in 1980 and terminated in 1982. Mr. Zacharkiw performed all of his services for said employer at a plant facility located in Stratford, Connecticut.

7. During 1981, petitioner generally spent the normal 5 day work week living and working in Stratford, Connecticut. On weekends petitioner would usually return to his apartment in Forest Hills, New York or, after October 1, 1981, to his abode in Glen Cove, New York. For all of 1981 petitioner leased, on a month-to-month basis, a one room apartment in Stratford, Connecticut. The

apartments maintained by petitioner in Forest Hills, New York and later in Glen Cove, New York were also one room abodes leased on a month-to-month basis.

8. During 1981, and for some years prior thereto, petitioner was not registered to vote, did not own an automobile or have a driver's license, and had no will. Petitioner, in 1981, maintained bank accounts both in the State of New York and the State of Connecticut.

9. When petitioner's employment in Stratford, Connecticut ended in 1982 he took up full-time residence at his abode in Glen Cove, New York. Sometime thereafter he accepted employment in New Jersey, however, he commuted back and forth between Glen Cove, New York and his assignment in New Jersey.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) provides that:

"A domicile once established continues until the person in question moves to a new location with a 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"

B. That the burden of proof is upon petitioner to show that the necessary intention to effect a change in domicile existed (Tax Law section 689[e]).

"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' (citation omitted). The evidence to establish the required intention to effect a change in domicile must be clear and convincing" (Bodfish v. Gallman, 50 AD2d 457).

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 Natl. Bank v. Kramer, 142 AD 444).

C. That petitioner has failed to sustain his burden of proof to show that he intended to abandon his New York State domicile and to acquire a new domicile in Connecticut. Since petitioner was a New York State domiciliary for all of 1981 and since he maintained a permanent place of abode within the State and also spent in excess of 30 days within New York, he is properly taxed as a full-year resident individual of New York State pursuant to section 605(a)(1) of the Tax Law.

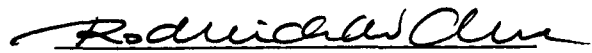
D. That for New York City income tax purposes, petitioner incurred a change of resident status from city resident to city nonresident effective on or about October 1, 1981 (Administrative Code § T46-154.0[a]). Furthermore, the Audit Division properly computed the income attributable to petitioner's period of New York City residency.

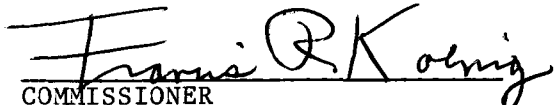
E. That the petition of Basi Zacharkiw is denied and the Notice of Deficiency dated November 5, 1984 is sustained in full, together with such additional interest as may be due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 17 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER