

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
ANDREW L. LUCE	:	DETERMINATION
	:	DTA NO. 818686
for Redetermination of a Deficiency or for Refund of New York City Personal Income Tax under the Administrative Code of the City of New York for the Year 2000.	:	

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Petitioner, Andrew L. Luce, P.O. Box 1501, Long Island City, New York 11101, filed a petition for redetermination of a deficiency or for refund of New York City personal income tax under the Administrative Code of the City of New York for the year 2000.

On March 13, 2002 and March 18, 2002, respectively, petitioner, appearing *pro se*, and the Division of Taxation, appearing by Barbara G. Billet, Esq. (Peter B. Ostwald, Esq., of counsel) consented to have the controversy determined on submission without a hearing. All documentary evidence and briefs were due to be submitted by July 8, 2002, which date began the six-month period for issuance of this determination. After due consideration of the record, Timothy J. Alston, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly determined that petitioner was a resident of the City of New York and therefore subject to City personal income tax during the year at issue.

***FINDINGS OF FACT***

1. Petitioner, Andrew L. Luce, timely filed his 2000 New York resident income tax return (Form IT- 200), dated April 10, 2001. Petitioner's return claimed a refund of \$33.77. On his

return, petitioner reported P.O. Box 1501, Long Island City, New York as his mailing address. Long Island City is located in Queens, New York City. He also reported “Nassau” as his county of residence and “Wantagh” (located in Nassau County) as his school district. Petitioner left blank the space on the return for his “permanent home address.”

2. The W-2 form filed with the return indicates an address for petitioner of “200 Hilton Ave. #7, Hempsted [sic], NY.” Petitioner’s employer, the State of New York, did not withhold any local income tax from his wages during the year.

3. On May 25, 2001, the Division of Taxation (“Division”) issued to petitioner a Notice and Demand for Payment of Tax Due which asserted additional income tax due for the year 2000 in the amount of \$969.23. The additional tax due was premised solely on the Division’s conclusion that petitioner was subject to City of New York resident income tax. To determine additional tax due, the Division simply computed City of New York resident tax on petitioner’s reported New York taxable income.

4. Petitioner filed an amended New York income tax resident return (Form IT-201-X) dated January 20, 2002. This amended return reported petitioner’s “permanent home address” as “120 Hanse Ave., Freeport, NY” and his school district as “Freeport” (located in Nassau County). The amended return made no changes to petitioner’s income or tax liability as reported on his original return.

5. Petitioner submitted Bell Atlantic telephone bills addressed to him at the P.O. Box 1501 Long Island City, New York mailing address for a phone number in the 516 area code. The 516 area code serves Nassau County only. The bills cover the period January through May 2000. In his brief petitioner asserts that the bills reflect phone service at his residence at “3211

Wilmarth Place, Wantagh, New York.” The bills themselves do not list an address for the location of the phone.

6. Petitioner also submitted affidavits from three individuals in support of his position.

Other than the name and residence of the affiant, the affidavits are identical, each stating:

I have known the petitioner, Andrew L. Luce, for a period in excess of ten (10) years and that during that time said Andrew L. Luce has never resided in the City of New York. Furthermore, that during calendar year 2000, said Andrew L. Luce resided in Nassau County, New York.

### ***CONCLUSIONS OF LAW***

A. The Administrative Code of the City of New York § 11-1701 imposes City personal income tax on every City resident individual. Insofar as is relevant in this matter, a City resident individual is: a) an individual who is domiciled in the City; or, b) a “statutory resident,” i.e., an individual who is not domiciled in the City but who maintains a permanent place of abode in the City and who spends more than 183 days in the City during the taxable year (*see*, Administrative Code § 11-1705[b][1]).

B. The record in this matter establishes that petitioner did not maintain a permanent place of abode in New York City in 2000. Petitioner’s W-2 Form for 2000 and his amended 2000 return list home addresses located in Nassau County. He submitted affidavits from three individuals attesting that he resided in Nassau County during 2000. He was responsible for a telephone bill with a Nassau County area code for at least part of 2000. In contrast, there is no evidence in the record of any home address for petitioner in the City. Accordingly, while the evidence submitted by petitioner is not overwhelming, given the lack of any evidence of a New York City home address, such evidence is sufficient to show that petitioner did not reside in the City.

The Division contended that petitioner's Queens mailing address, coupled with his failure to report a permanent home address on his original return, is "tantamount to an admission that he is a domiciliary of New York City." This contention is rejected. Given the proximity of Queens to Nassau County, the use of a Queens post office box mailing address is not out of the ordinary. The use of such a mailing address thus provides little support to a finding that petitioner maintained a permanent place of abode in the City during the year in question. Additionally, petitioner's failure to report a permanent home address on his original return does not constitute evidence of a New York City residence. At most, such facts merely provided the Division with a rational basis upon which to issue its Notice and Demand. They are outweighed by other evidence in the record, discussed above, indicating that petitioner did not maintain a permanent place of abode in the City.

Having concluded that petitioner did not maintain a permanent place of abode in the City in 2000, it follows that petitioner was not a statutory resident of the City under Administrative Code § 11-1705(b)(1)(B). Additionally, the absence of a permanent place of abode, supported by the affiants' attestations that petitioner never resided in the City, compels the conclusion that petitioner was not a domiciliary of New York City pursuant to Administrative Code § 11-1705(b)(1)(A). Accordingly, petitioner was not a City resident and was not subject to City income tax during 2000.

C. The petition of Andrew L. Luce is granted and the Notice and Demand for Payment of Tax Due dated May 25, 2001 is canceled.

DATED: Troy, New York  
December 12, 2002

/s/ Timothy J. Alston  
ADMINISTRATIVE LAW JUDGE