

# Tax court of canada Case



## PROBLEM THREE [Min Shan Shih v the Queen 2000 DTC 2072 – Residence]

Read the Tax Court of Canada case Min Shan Shih v the Queen 2000 DTC 2072 and explain in your own words the reason for the decision in the case.

Solution to P3-3 The taxpayer was found not resident in Canada for the years in question because when all of the facts were considered, the taxpayer never became a resident of Canada.

His normal routine of daily living remained in Taiwan (i. e. , his work, parents, social ties, etc. ). The taxpayer's wife and children became resident in Canada so that the children could be educated in Canada. Facts supporting the position that the taxpayer was resident in Canada throughout the years in question, 1997, 1998, and 1999: Taxpayer owned a house in Canada, readily available to him at all times, •Taxpayer's wife and children lived in Canada in the family home throughout the years in question, •Taxpayer filed a Canadian tax return for each of the years, •Taxpayer gave the family home in Canada as his address on his tax returns, •Taxpayer had applied for permanent residence status in Canada for himself and his family, •In 1996 the taxpayer and his family were admitted to Canada as landed immigrants, •Taxpayer maintained a bank account in Canada jointly with his wife, •Taxpayer owned a car in Canada, Taxpayer obtained an Ontario driver's license and an Ontario healthcard, •Taxpayer was the sole shareholder of a Canadian corporation, •In 2000 the taxpayer's wife and children became citizens of Canada, and •The family home in Taiwan was sold prior to coming to Canada. Facts supporting the position that the taxpayer was not resident in Canada throughout the years in question: •Taxpayer was employed in Taiwan throughout the years in question, •Taxpayer maintained an

apartment in Taiwan, Taxpayer's pay (employment income) was deposited into his Taiwanese bank account, •Taxpayer had a Taiwanese driver's license and pharmacist's license, •All of the taxpayer's club, church and professional association memberships were in Taiwan, •Taxpayer visited Canada only twelve times during the p 1996 – 1999, •Taxpayer spent a great deal more time in Taiwan than in Canada, •The education of the taxpayer's children was the reason for coming to Canada and applying for landed immigrant status, •Taxpayer never had a permanent connection with Canada, Taxpayer had always lived in Taiwan, •Taxpayer was a citizen of Taiwan, •The purpose of the taxpayer's visits to Canada during 1996 – 1999 were to visit his wife and children, •Taxpayer had strong family ties in Taiwan, his parents. Based on the facts, the taxpayer was found to be resident in Taiwan during the years in question. Since an individual may be resident in more than one country at the same time, one must question whether he was also resident in Canada.

Apart from the presence of his wife and children in Canada, the taxpayer did not have other connections to Canada which would cause him to be resident. The taxpayer did not change his life pattern in Taiwan after he was admitted to Canada as a landed immigrant. If the taxpayer had been found resident in Canada, then his world income, including his Taiwan employment income, should have been reported on his Canadian tax returns for the years in question.