

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations
A-2
Appleton, Lloyd O.

TO: Commissioners Murphy, Palestin & Macduff
FROM: Solomon Sies, Hearing Officer
SUBJECT: LLOYD O. APPLETON

**Application for Revision or Refund of
Personal Income Taxes under Article 16
of the Tax Law for the year 1959**

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y., on October 14, 1964. The appearances and the evidence produced are as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayer, a domiciliary of the state of Iowa, employed as a civilian instructor at the Military Academy at West Point, New York, living with his family in public quarters there, is to be considered a member of the Armed Forces, exempt from New York State personal income taxes, pursuant to Subdivision 7(a) of Section 350 of the Tax Law. A corollary issue is whether the taxpayer maintains a permanent place of abode within the state.

The taxpayer was born in Iowa, owns property in Iowa and has voted in Iowa whenever he voted. He never abandoned the state of Iowa as his place of domicile. The record clearly establishes that the taxpayer was a domiciliary of the state of Iowa.

In April, 1946, the taxpayer was appointed by the U. S. Civil Service Commission as a Professional Assistant (Grade GS-11) to the Associate Director of Physical Education, Department of Tactics at the U. S. Military Academy at West Point, N. Y. His U. S. Civil Service status is now that of Grade GS-12. His title has been changed to Associate Director, but without any change in status or duties. His duties require him to give military instruction in marching, boxing, swimming, military tactics, etc. The taxpayer, in effect, is a civilian instructor of Physical Education at the Academy. The taxpayer serves under military orders originating from either the U. S. Military Academy or the Adjutant General's office in Washington, D. C. He is required to wear the official U. S. Army officer's uniform and insignia at all times.

The organization of the Military Academy at West Point is controlled by Title 10, U. S. Code, Sections 3062 (C), 3075 (A & B) indicating specifically the composition of the regular U. S. Army. Section 4331 prescribes the composition of the faculty at West Point. It states that there shall be one permanent professor of Physical

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Education. Subdivision (D) of Section 4333 provides that the permanent professors of the Academy shall be appointed by the President by and with the consent of the Senate. Subdivision (D) of Section 4334 provides that the permanent professors and registrar exercise command and rank only in the Academic Department of the Academy. In the case of Huss v. U. S., 1943 Ct. Cl. (1907) 19, it was held that the office of professor is not an army office within the military acceptation of that term and that this section was designed to give rank to civilian professors in order to enforce military discipline at the Academy but does not change the character of the office by the addition of actual rank in the army. Subdivision (B) of Section 4339 provides that the civilian instructors in the Departments of Foreign Languages and Tactics (the Department in which the taxpayer was employed) are entitled to public quarters and fuel and light therefor.

An agreement was signed on March 27, 1959 by the Acting Secretary of the Treasury on behalf of the United States Treasury Department, and on March 31, 1959, by the governor of the state of New York governing the withholding of New York State income taxes on the compensation paid to Federal employees who are subject to the tax and who are regularly employed in the state of New York whether they are residents or non-residents.

In Manual of Policy, Income Tax Bureau, Article 503, Pages 3, 4 & 5, regarding the taxability of foreign, diplomatic officials and employees stationed in New York as well as army and civilian personnel stationed abroad where government quarters are furnished them, it is stated that: "Such living quarters would not be considered as a permanent place of abode maintained by the taxpayer."

Although the Income Tax Bureau has taken the position that the taxpayer was a resident, I am of the opinion that the taxpayer was a non-resident of this state for income tax purposes in accordance with Subdivision (7) of Section 350 of the Tax Law since he was a domiciliary of the state of Iowa and did not maintain a permanent place of abode in this state.

As a non-resident the taxpayer was, nevertheless, subject to New York State income tax liability. However, the taxpayer was not required to include in his non-resident return as part of gross income dividends and interest income received in accordance with Articles 401 and 419 of the Personal Income Tax Regulations. Accordingly, the correct total tax due from the taxpayer for the year 1959 amounts to \$157.23. Since \$120.70 was already withheld, there is an additional tax due from him in the sum of \$36.53, with lawful interest and other statutory charges thereon.

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For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

MAR 30 1965

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

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STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

LYOYD C. APPLETON

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959

The taxpayer, Lloyd C. Appleton, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 14th day of October, 1964, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer herein was appointed by the U. S. Civil Service Commission in April, 1944 as a Professional Assistant, GS-11 and assigned to the Department of Military Instruction at the U. S. Military Academy at West Point; that his U. S. Civil Service status is now that of GS-12; that although his title has been changed to Associate Director, there has been no change in status or duties; that the duties of the taxpayer consisted of giving military instruction in marching, boxing, swimming, military tactics, etc; that the taxpayer served under military orders originating from either the U. S. Military Academy or the Adjutant General's Office, Washington, D. C.; that he is required to wear the official army officer's uniform and insignia; that pursuant to Section 4330, Title 10 U. S. Code, the taxpayer is entitled to

public quarters and fuel and light therefor.

(2) That prior to and during the year 1959, the taxpayer was a domiciliary of the State of Iowa; that although the taxpayer and his family were furnished quarters at the Military Academy at West Point, New York, in connection with the services rendered by the taxpayer for the U. S. Army, such quarters do not constitute a permanent place of abode within the State of New York.

(3) That during the year 1959 the taxpayer was a civilian employee employed by the U. S. Army at the Military Academy at West Point, N. Y. and was not a member of the U. S. Armed Forces on active duty who would be exempt from the imposition of New York State income taxes in accordance with Subdivision 7-a of Section 350 of the Tax Law.

(4) That pursuant to an agreement concluded in April, 1959, between the Secretary of the United States Treasury and the State of New York governing withholding of New York State income tax from the compensation of employees of the United States whose regular place of employment is located within the State of New York, Federal agencies are required to withhold New York income tax from compensation of employees of the United States who are subject to the taxes and who are regularly employed in New York whether they are residents or non-residents.

(5) That the taxpayer, a non-resident of the State of New York, was regularly employed in New York during the year 1959 as a civilian employee of the U. S. Army and subject to New York State income taxes as a non-resident in accordance with Section 351-a of the Tax Law.

Based upon the foregoing findings the State Tax Commission hereby

D E T E R M I N E :

(1) That during the year 1959 the taxpayer was a non-resident

of the State of New York for income tax purposes in accordance with Subdivision 7 of Section 350 of the Tax Law; that during the year 1959, the taxpayer was not a member of the U. S. Armed Forces on active duty, exempt from the imposition of New York State income taxes pursuant to Subdivision 7-a of Section 350 of the Tax Law; that the taxpayer during the year 1959 was a non-resident regularly employed in the State of New York as a civilian employee of the U. S. Army and therefore subject to New York State withholding and New York State income taxes as a non-resident in accordance with Sections 351 and 351-a of the Tax Law.

(B) That as a non-resident, the taxpayer was not required to include in his non-resident New York State tax return as part of gross income (dividend and interest income in accordance with Articles 401 & 419 of the Personal Income Tax Regulations.

(C) That as a result of Determination (B) above, the taxes due from the taxpayer for the year 1959 amount to \$157.23; that there was withheld from the salary paid to the taxpayer the sum of \$120.70; that there is an additional balance due from the taxpayer in the sum of \$36.53 with lawful interest and other statutory charges thereon; that, accordingly, no further recoupation, recoupment or refund can be made to the taxpayer and that the taxpayer's application for revision or refund except as herein indicated be and the same is hereby denied.

DATED: Albany, New York on the 19th day of November, 1965.

STATE TAX COMMISSIONER

JOSEPH H. MURPHY
Commissioner

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner

/s/