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Income Tax Determinations
Dumas, William J. A-2

Commissioners Murphy, Palestin & Macduff

Solomon Sies, Hearing Officer

WILLIAM J. DUMAS

**Petition for Redetermination of Deficiency
or for Refund of Personal Income Taxes for
the year 1962**

Article 23 - Case No. CC 1554 & File No. 2-8602265

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y. on January 5, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether or not the taxpayer was a resident of this State, for income tax purposes, during the period from January 1, 1962 to August 15, 1962, in accordance with the provisions of §608, Article 22 of the Tax Law. The corollary issues are: (1) whether or not the taxpayer effected a change of domicile from the State of New York to the State of Illinois in February, 1962; (2) whether or not the taxpayer maintained a permanent place of abode within the State of New York for the period from January 1st to August 15, 1962; and (3) whether or not the taxpayer maintained a permanent place of abode in Chicago, Illinois during the period from February through July, 1962 and did not spend more than thirty days in the State of New York during the year 1962.

The taxpayer filed a non-resident income tax return for the year 1962 in which he reported net New York income in the sum of \$1,927.70 and indicated that earnings in the sum of \$27,818.23 earned in Chicago, Illinois were not allocable to New York earnings and requested a refund of \$1,016.25. The taxpayer claims that he became a non-resident on February 1, 1962 at which time he had effectuated a change of domicile from the State of New York to the State of Illinois; that he maintained a permanent place of abode in Chicago, Illinois from February 1, 1962 through the balance of said year and did not maintain a permanent place of abode in this State during the aforesaid period. On December 4, 1963 the Income Tax Bureau issued a statement of audit changes adjusting the taxpayer's New York gross income to include additional income up to July 31, 1962 since a change of domicile did not take place until August 1, 1962 and subsequently issued a notice of deficiency in accordance therewith. The deductions and exemptions were pro-rated accordingly.

To: Commissioners Murphy, Palestin & Macduff
Re: William J. Dumas
continued

Prior to February 1st, 1962, the taxpayer owned a one-family residence at 8 Highland Park Place, Rye, New York, where he lived with his wife and three children and was employed by William E. Wright & Sons Co. of West Warren, Massachusetts, as assistant sales manager at its office in New York City.

On January 5, 1962 the taxpayer entered into an agreement of employment with Ekco Products Co. as divisional vice-president in charge of all Berkley sales and merchandising in Chicago, Illinois for which he was to receive a salary of \$27,000.00 per year effective February 1, 1962. In the latter part of January, 1962, the taxpayer stayed at a hotel in Chicago in order to familiarize himself with the operations of his new position. On or about February 1, 1962, the taxpayer rented an apartment in Chicago consisting of seven rooms, unfurnished, at a rental of \$310.00 per month. He brought his personal effects and some furniture into this apartment. In the meantime, his family remained in the house in Rye, New York. He visited them on weekends and they in turn visited him during whatever periods were available to them when the children were out of school (Minutes of Hearing, page 11). It appears that the taxpayer's place of abode in Chicago, Illinois was temporary in nature; that he intended to retain his domicile and permanent place of abode in New York until his children finished their school year in New York at the end of June 1962 provided he could arrange for the sale or lease of his residence in Rye, New York. In August of 1962, the taxpayer entered into an agreement of lease leasing his residence in Rye, New York to a tenant for a three year period commencing September 1, 1962 and ending August 31, 1965, at an annual rental of \$4,500.00. The taxpayer's wife and family left New York with their personal belongings and furniture on August 15, 1962 for Chicago and have resided there ever since. The taxpayer spent more than thirty days within New York during the taxable year 1962. No evidence was submitted by the taxpayer or his representative to indicate whether or not the taxpayer had entered into a written agreement of lease of the apartment in Chicago, Illinois.

In the case of Peo. ex rel. Mackall v. Bates 278 App. Div. 724, 103 N.Y.S. 2d 31, it was held that where a taxpayer lived and worked in Washington, D. C. but maintained a permanent place of abode in New York while doing so was subject to New York State income tax and that his living arrangements in Washington, D. C. did not constitute the maintenance of a permanent place of abode there.

To: Commissioners Murphy, Palestin and Macduff
Re: William J. Dumas
continued

I am of the opinion that the taxpayer and his family remained domiciliaries of the State of New York from January 1, 1962 until about August 15, 1962 when they rented their residence in Kye, New York and removed their personal belongings, furniture and furnishings to Chicago, Ill.; that the taxpayer and his family maintained a permanent place of abode within the State of New York during the period from January 1, 1962 to August 15, 1962 and spent more than thirty days within this State during the taxable year 1962; that, accordingly, the taxpayer was a resident of this State, for income tax purposes for the period from January 1st through July 31st, 1962 within the intent and meaning of §605, Article 22 of the Tax Law.

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

AUG 4 - 1965

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

SS:nbl (Dec. 21, 1965)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

WILLIAM J. DUNNE

Case #001554

**FOR REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAX FOR
THE YEAR 1962.**

William J. Dunne, having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 23 of the Tax Law for the year 1962 (File #2-8602866) and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y., on the 5th day of January, 1963, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by D. Friedman & Co., Accountants and Auditors, by Sol Cooper, registered Public Accountant, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That prior to February 1, 1962, the taxpayer resided with his wife and three minor children at 8 Highland Park Place, Nye, N. Y., in a one-family residence owned by the taxpayer and his wife; that the taxpayer at that time was employed as assistant sales manager by William E. Wright & Sons Co. of West Warren, Massachusetts, at its New York City Office; that the total wages received by the taxpayer from the aforementioned employer during the year 1962 amounted to \$2,792.16.

(2) That on January 5, 1962, the taxpayer entered into an agreement with Exco Products Co. as divisional Vice-President in

charge of all Backley sales and merchandising at a salary of \$27,000.00 per year effective February 1, 1962; that said agreement was evidenced by a letter written by Richard C. Scholts, Executive Vice-President of Elco Products Co. to taxpayer on January 5, 1962; that the taxpayer went to Chicago during the latter part of January and stayed for a short period of time at a hotel there; that on or about February 1, 1962, or shortly prior thereto the taxpayer rented an unfurnished apartment in Chicago consisting of seven rooms at a rental of \$310.00 per month; that the taxpayer removed some of his personal effects and some furniture to the apartment; that during the period from January 1, 1962, until about August 15, 1962 the taxpayer's wife and family remained in the residence at Rye, New York; that the taxpayer visited his family in New York on weekends and they in turn visited him during whatever periods were available to them when the children were out of school (Minutes of Hearing, page 11); that in August, 1962, the taxpayer and his wife entered into an agreement of lease with one Henri J. Pardious of their one-family residence in Rye, N Y, unfurnished, for a period of three years commencing September 1, 1962 and terminating on the 31st day of August, 1965, at an annual rental of \$4,500.00; that the taxpayer's wife and children removed from Rye to Chicago, Illinois, at which time they removed all of their furniture and personal belongings; that the taxpayer and his wife and family have resided in Chicago since approximately August 15, 1962.

(3) That the taxpayer filed a New York State non-resident income tax return for the year 1962 in which he reported net income allocable to New York in the sum of \$1,927.70; that the taxpayer claimed itemized deductions on his Federal return and after deducting exemptions reported no New York tax due; that the taxpayer indicated on said return total income reported on Federal return in the sum of \$27,818.23; that New York tax withheld amounted to \$1,016.23; that

the taxpayer requested a refund of said sum; that on December 4, 1963, the Department of Taxation & Finance issued a statement of audit changes recomputing additional income allocable to the State of New York up to July 31, 1963 and adjusted his New York gross income in the sum of \$10,327.76 and pro-rated the deductions and exemptions accordingly so that the amount recomputed to be due from the taxpayer for the year 1962 amounted to \$1,924.95 and imposed additional personal income tax due in the sum of \$8.70 on the ground that the taxpayer had not effectuated a change of domicile until August 1, 1962; that, accordingly, on May 18, 1964, a notice of deficiency was issued to the taxpayer in said sum.

(4) That the taxpayer has failed to establish that he effectuated a change of domicile from New York to Chicago, Illinois on February 1, 1962 or at any time prior to August 1, 1962; that the taxpayer and his family were domiciled within the State of New York for the period from January 1, 1962 until approximately August 15, 1962; that the taxpayer has failed to establish that he maintained a permanent place of abode outside the State of New York during the period from February 1, 1962 to August 1, 1962; that the taxpayer did not maintain a permanent place of abode without the State of New York during the period from February 1 to August 1, 1962 and did spend more than thirty (30) days of the taxable year 1962 in this State; that the taxpayer and his family were domiciliaries of the State of New York and maintained a permanent place of abode within this State during the period from January 1, 1962 until August 15, 1962; that the taxpayer's removal to Chicago, Illinois was for a temporary period of time in order to permit his children to complete their school year in New York until the end of June, 1962 so that he could arrange to have his family join him in Chicago, Illinois provided he could arrange for the sale or lease of his residence in New York.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

RECOMMENDATIONS AND DECISIONS:

(A) That the taxpayer was a resident of the State of New York for income tax purposes during the period from January 1, 1962 until August 1, 1962, within the intent and meaning of §602, Article 22 of the Tax Law.

(B) That, accordingly, the notice of deficiency for the year 1962 is correct and is hereby sustained; that no recoupment, resettlement or revision of the taxes due can be made herein and that the taxpayer's petition for redetermination of a deficiency or refund of personal income taxes for the year 1962 be and the same is hereby dismissed.

DATED: Albany, New York, on the 29th day of December, 1962.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

Commissioner