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STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

ADAM JOHNSTONE

FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEAR 1951.  
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The taxpayer, Adam Johnstone, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1951 and a notice of hearing dated July 15, 1964 having been mailed on said date to the taxpayer herein care of Sidney R. Warren, Esq., his attorney, as indicated on Form IT-114 (Demand for a Hearing) duly filed by the taxpayer, scheduling a hearing to be held at the New York City Office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 19th day of August, 1964 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having defaulted in appearance thereon, said default having been duly noted and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Adam Johnstone, filed a New York State income tax non-resident return for the year 1951 on April 15, 1952 in which he reported income as salary from Drake America Corporation, a domestic corporation organized under the laws of the State of New York, having its principal and sole place of business in the City and State of New York, in the sum of \$41,250.00; that the taxpayer indicated on said return that he had filed a return for 1950 during which year he had resided at

Port Washington in the State of New York; that the taxpayer paid the tax computed by him on said return in the sum of \$2,130.30.

(2) That on December 24, 1953 the taxpayer filed an application for revision or refund in which he indicated that he was a permanent resident of the State of Connecticut during the year 1951; that his income was attributable to sources both within and without the State of New York; that his salary income was received by virtue of services rendered and performed by him in connection with his employment both within and without the State of New York; that during the year 1951 the taxpayer spent a total of 95.5 days performing services for the employer corporation outside the State of New York and requested an allocation and also a refund in the sum of \$749.78.

(3) That on February 16, 1954 the Department of Taxation and Finance wrote the taxpayer requesting additional information as to the exact date he became a resident of Connecticut and further advised him that when a change in residential status occurs during a taxable year, under the provisions of the New York State Tax Law and Regulations, two returns are required to be filed, Form 201 for the period he was a resident and Form 203 for the period he was a non-resident and also requested information as to an itemized breakdown of deductions claimed by the taxpayer; that on April 14, 1954 the representative of the taxpayer advised that the taxpayer moved to Connecticut on April 30, 1951; that the taxpayer's salary for the period January 1 to April 30, 1951 amounted to \$13,770.00; that the deductions claimed by the taxpayer for said period included real estate tax on residence owned in the State of New York, \$66.98; New York State auto license and gas tax, \$25.00; entertainment and transportation tax, \$70.00; contributions, \$66.65; medical expenses, \$229.93; that the taxpayer during said period only worked 70.5 days within the State of New York; that

on September 28, 1954 the Department of Taxation and Finance wrote the representative for the taxpayer that since the taxpayer did not indicate on his income tax return the sale of the property, it is requested that the taxpayer complete an enclosed schedule giving detailed answers to all questions; that on February 15, 1955 Sidney R. Warren, Esq. attorney for the taxpayer notified the Department that the taxpayer was presently residing in England; that Schedule IT-2126 was being forwarded to the taxpayer for reply; that neither the taxpayer nor his attorney ever furnished the necessary information.

(4) That the taxpayer was a domiciliary of the State of New York during the year 1950; that he has failed to establish a change of domicile during the year 1951; that the taxpayer maintained a permanent place of abode within the State of New York during the period January 1 through April 30, 1951.

Based upon the foregoing findings, the State Tax Commission hereby

**DETERMINES:**

(A) That the taxpayer was domiciled within the State of New York during the year 1951 and spent more than 30 days within the State; that the taxpayer was, therefore, a resident of the State of New York during the year 1951, for income tax purposes, in accordance with subdivision 7 of Section 350 of the Tax Law.

(B) That by virtue of Determination (A) above, the taxpayer is not entitled to an allocation of income earned outside the State of New York in accordance with Section 351 of the Tax Law, then in effect.

(C) That, accordingly, there can be no recomputation, resettlement, revision or refund of the taxes paid herein by the taxpayer and that the taxpayer's application for revision or

refund with respect to the year 1951 be and the same is hereby  
denied.

DATED: Albany, New York on the 26th day of April , 1955 .

**STATE TAX COMMISSION**

/s/

**JOSEPH H. MURPHY**

**Commissioner**

/s/

**IRA J. PALESTIN**

**Commissioner**

/s/

**JAMES R. MACDUFF**

**Commissioner**

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Palestin & Macduff  
FROM: Solomon Sies, Hearing Officer  
SUBJECT: ADAM JOHNSTONE

Application for Revision or Refund  
of Personal Income Taxes under  
Article 16 of the Tax Law for the  
Year 1951.

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York City, N.Y. on the 19th day of August, 1964. The taxpayer defaulted in appearance at said hearing.

The issues involved herein are: (1) whether the taxpayer was a resident of this State for income tax purposes in accordance with subdivision 7 of Section 350 of the Tax Law; and (2) whether the taxpayer is entitled to an allocation of earnings alleged to have been derived from services rendered both within and without the State of New York in accordance with Section 351 of the Tax Law.

The taxpayer filed a non-resident return for the year 1951 in which he reported salary income from Drake America Corporation, having its principal place of business in the City and State of New York. The taxpayer indicated on said return that he filed a return for the year 1950 from Port Washington, New York. He paid the tax computed by him on said return and thereafter filed an application for refund claiming that he was not a resident and was entitled to an allocation for days worked both within and without the State of New York.

The file indicates that the taxpayer moved to Connecticut on April 30, 1951 and that he was still the owner of real property located at Port Washington, New York during said year. The Income Tax Bureau requested additional information in order to ascertain whether the taxpayer had in fact effected a change of domicile during the year 1951. Although repeated requests for such information were made, no proper response was forthcoming either by the taxpayer or his representative.

I am of the opinion that the taxpayer failed to establish that he was not a domiciliary of the State of New York during the year 1951 and since he spent more than thirty (30) days within the State of New York, he is deemed to have been a resident of this state during the year in question, for income tax purposes, in accordance with subdivision 7 of Section 350 of the Tax Law. Accordingly, the taxpayer is not entitled, as a resident, to an allocation of income

**TO: Commissioners Murphy, Palestin & Macduff**

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earned both within and without the State of New York in accordance with Section 351 of the Tax Law.

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

FEB 23 1965

**/s/ SOLOMON GIBB**  
**Hearing Officer**

**Approved**

**Approved**

SS/kk  
Encls.  
April 14, 1965