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MEMORANDUM

Income Tax Determinations
A-2
Berlin, Irving

TO: Commissioners Murphy and Macduff

FROM: E. H. Best, Counsel

SUBJECT: Irving Berlin
Petition for a redetermination or for refund of
personal income taxes for the year 1960

A hearing with reference to the above matter was held at 80 Centre Street, New York, New York, on November 23, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved is allocation of income by a nonresident.

The facts are as follows: The taxpayer became a New York resident on June 15, 1960. For 1960 he filed two returns; a nonresident return on which he reported income of \$10,400 and a resident return on which he reported income of \$12,865. His total income, as reported on Federal form 1040 was \$25,730. Of this total \$10,400 was received from A. Berlin & Sons Inc., a domestic corporation, and \$15,330 from Clinton Garment Mfg. Co., Inc., a Kentucky corporation.

The taxpayer was employed as a sales representative by both corporations simultaneously. During the period of his non-residency he spent half of his time in Kentucky and half in New York. In both places he rendered services equally, to both employers, devoting half his time to each.

Audit changes issued May 29, 1963 reduced the taxpayer's itemized deductions to \$2,971.32 by disallowing an out-of-state charitable contribution of \$86.00 and life insurance premium deduction of \$150. In addition, a duplication of credit for New York State tax withheld in the sum of \$244.40, taken on both resident and nonresident returns and duplication of allowable deductions were corrected.

Further audit changes, issued September 6, 1963 increased the taxpayer's income to \$25,730, as reported by him on his Federal return for 1960, and excluded \$7,200, the total amount received from the Kentucky employer during taxpayer's non-residency. This exclusion was based on information received from the taxpayer's accountant that this amount was earned solely out of the state and reduced his New York taxable income to \$13,158.68.

Thereafter, on April 13, 1964 additional audit changes were issued, based on information that only one-half of the time as a nonresident was spent out of the state for both employers, resulting in a New York taxable income of \$14,358.68. This was effected by excluding only one-half of the \$7,200, the sum paid by the Kentucky employer, for services rendered in Kentucky during the taxpayer's period of nonresidence, and by excluding one-half of the \$4,800, the sum paid by the New York employer for services rendered in Kentucky during the same period of nonresidence. This total exclusion amounted to \$6,000 instead of the \$7,200 previously excluded. The present calculations properly reflect his earnings outside of the state while a nonresident.

The taxpayer contends that of his total earnings of \$12,000 (\$7,200 plus \$4,800) during his period of nonresidency, one-half, earned while he was physically absent from the state, should be excluded, and that half of the remainder, earned while he was in New York, should be excluded as well, because he was working for an out-of-state employer.

The taxpayer's contention is erroneous, in that it would exclude earnings from New York sources.

A proposed determination has therefore been prepared sustaining the assessment on the above grounds.

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

/s/

E. H. BEST

Counsel

September 19, 1966
AR:cp
Enc.

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

IRVING BERLIN

**FOR A REDETERMINATION OF A DEFICIENCY OR FOR
REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22
OF THE TAX LAW FOR THE YEAR 1960**

Irving Berlin having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1960, (File No. 8539831) and a hearing having been held in connection therewith on November 23, 1965 at the office of the State Tax Commission, 80 Centre Street, New York, New York, at which hearing the taxpayer was represented by his attorney, Joseph S. Lefrak, Esq., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed New York tax returns for 1960 reporting an overpayment in the amount of seventy cents; that the State Tax Commission issued a notice of deficiency in the amount of \$536.14 based upon understatement of income, duplication of deductions and tax credits and allocation of income without and within the state. Taxpayer objects solely to the allocation of income.

(2) That from January 1, 1960 to June 15, 1960 the taxpayer was a nonresident of New York; that for the remainder of the year he was a resident.

(3) That during 1960 the taxpayer was employed

simultaneously by A. Berlin & Sons Inc., a domestic corporation, and Clinton Garment Mfg. Co., Inc., a Kentucky corporation, as a sales representative.

(4) That the taxpayer's total income from his employers for 1960 was \$25,730 (\$10,400 from A. Berlin & Sons Inc. and \$15,330 from Clinton Garment Mfg. Co., Inc.); that during the period of taxpayer's nonresidency he earned \$12,000 (\$4,800 from Berlin and \$7,200 from Clinton).

(5) That during the period of taxpayer's nonresidency from January 1, 1960 to June 15, 1960 the taxpayer spent half of his employment time in Kentucky and half in New York.

(6) That during the time he spent in Kentucky the taxpayer rendered services equally to both employers.

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

DECIDES:

(A) That one-half of the taxpayer's earnings from both employers during his period of nonresidency from January 1, 1960 to June 15, 1960 was income from New York sources.

(B) That, accordingly, the additional taxes set forth in the notice of deficiency for the year 1960 under Article 22 of the Tax Law are correct and are due and owing, together with lawful interest and other statutory charges.

Dated: Albany, New York this 23rd day of September , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER