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Income Tax Determinations
BUREAU OF LAW

MEMORANDUM

A-Z
Ernst, Albert E. and
Anita D.

TO: Commissioner Palestin
FROM: M. Schapiro, Associate Attorney
SUBJECT: Formal Hearing
Albert E. Ernst and Anita D. Ernst, his wife,
Application for revision or refund of personal
income taxes under Article 22 of the Tax Law for
the years 1960 and 1961

I have made the corrections in the proposed determination, in accordance with discussions had with you, and have shown the same to Commissioner Macduff. Commissioner Macduff had offered to sign the corrected determination as prepared by me but, at my request, has agreed to sign the determination only if first approved by you.

/s/

MARTIN SCHAPIRO

Associate Attorney

August 2, 1966

MS:ep

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff

FROM: E. H. Best, Counsel

SUBJECT: Albert E. Ernst and Anita D. Ernst, his wife,
Application for revision or refund of personal
income taxes under Article 22 of the Tax Law for
the years 1960 and 1961

A hearing with reference to the above matter was held at 80 Centre Street, New York, New York, on December 28, 1961. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not the income of the nonresident taxpayer, an employee who worked at home in Connecticut, was attributable to New York sources.

Assessments were issued disallowing the taxpayer's allocation to out-of-state, sources of income in the amount of 61 days for work performed by the taxpayer at his Connecticut home in 1960 and 83 days in 1961.

The facts disclosed that the taxpayer was employed by Continental Oil Company at its offices located at New York City, Houston and London, England. The taxpayer whose work consisted of making policy decisions with respect to establishing his employer in foreign countries in the fields of marketing, distribution, transportation and refining of oil, was provided with his own office at his employer's New York location and was further provided with his staff of three assistants and three secretaries at such office. The taxpayer contended nevertheless that he could only work effectively at home in making such decisions. However, the taxpayer was not required pursuant to contract with or other direction from his employer to work at home.

I am of the opinion that such work could have been performed at the New York office of the employer but was performed by the taxpayer at his home because of greater convenience. In accordance with the cases of Burke v. Bragallini, 10 A D 2d 684 and Morhouse v. Murphy, 10 A D 2d 754, the income derived from such work constitutes income from sources within the state.

Commissioners Murphy,
Palestin and Macduff

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A proposed determination has therefore been prepared sustaining the assessments as issued, with minor modification for the year 1961 because of clerical error.

Kindly return the files after disposition.

/s/

E. H. BEST

Counsel

July 11, 1966

MS:ep (July 18, 1966)

Encs.

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

ALBERT E. ERNST AND ANITA D. ERNST, HIS WIFE,
FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE
YEARS 1960 AND 1961

The taxpayers herein having duly filed applications for revision or refund of personal income taxes imposed under Article 22 of the Tax Law for the years 1960 and 1961 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York, at which hearing the taxpayer Albert E. Ernst appeared in person and testified, and having been represented by counsel, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Albert E. Ernst, a resident of the State of Connecticut, was employed by Continental Oil Company, a Delaware corporation having offices for the conduct of business at New York City, New York, Houston, Texas, and London, England.

(2) That the taxpayer Albert E. Ernst on his 1960 nonresident return claimed an allocation of 195 days attributable to days worked outside the state which included 61 days for work performed at the taxpayer's Connecticut home; that on his 1961 nonresident return the taxpayer claimed an allocation of 174 days attributable to days worked outside the state which included 63 days for work performed at home; that assessments were issued

for the year 1960 in the amount of \$826.28 (Assessment No. AB-828463 dated August 24, 1962) and in the amount of \$1,321.83 for the year 1961 (Assessment No. AB-817529 dated August 9, 1962) on the ground that the income derived from work performed by the taxpayer at his home during the years 1960 and 1961 was income attributable to New York sources for each of those years and did not constitute income derived from work performed outside the State of New York.

(3) That the taxpayer was employed to initiate, develop and implement policies, programs and plans which would establish his employer in foreign countries in the fields of marketing, distribution, transportation and refining of oil.

(4) That the taxpayer was provided with his own office at his employer's New York location; that the taxpayer further was provided with a staff of three assistants and three secretaries at such office; that nevertheless the taxpayer contends that his work required making decisions and that such work could only have been effectively done at home.

(5) That the taxpayer worked at his home regularly both during the week and on weekends and was reimbursed for telephone and entertainment expenses incurred at his home.

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

DETERMINES:

(A) That there was no necessary ingredient required by the contract of employment, by the nature of the services performed and the formulation of judgment which necessitated the State of Connecticut or the home of the taxpayer as the locus for performance; that such services could have been performed at the New York office of the employer but were performed by the taxpayer at his home because of greater convenience.

(B) That the State Tax Commission properly disallowed any allocation of income outside of the State for services performed by the taxpayer at his Connecticut home during the years involved.

(C) That due to an error in mathematical computation, the assessment for additional taxes (Assessment No. AB-020469) for the year 1960 is hereby modified to the extent of \$10.07; that said assessment for the year 1960, in the corrected amount of \$816.10, is affirmed; that said assessment as corrected does not include any other taxes or charges which are not lawfully due and owing.

(D) That the assessment for additional taxes (Assessment No. AB-017529) for the year 1961 is affirmed; that such assessment is correct and does not include any other taxes or charges which are not lawfully due and owing.

DATED: Albany, New York this 10th day of August, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner