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MEMORANDUM

*Income Tax Determinations**A-2**Gouger, Matthew M.*

TO: Commissioners Murphy, Palestine and Macduff

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: Matthew M. Gouger, application for revision
or refund of personal income taxes under
Article 22 of the Tax Law for the Year 1960

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on June 18, 1968. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised is whether petitioner was a resident of New York during 1960 and whether income received from General Aniline & Film Corporation during that year was subject to New York State income tax.

Petitioner had been employed by General Aniline & Film Corporation for some years and lived in Manhasset, N. Y. In October 1959 he left New York to take up his duties as President of Data Graphics Systems in California. Data Graphics Systems was a combined venture by General Aniline & Film Corporation and Douglas Aircraft Corporation. The change of position was to be permanent and petitioner put his New York house on the market and drove to California with his wife. Petitioner continued to be paid by General Aniline & Film Corporation at the same salary he had been receiving as Vice President of General Aniline & Film Corporation.

Early in 1960 the two companies disagreed, and petitioner's services as President of Data Graphics Systems were terminated in February 1960. He never returned to New York. He visited his place of origin, Texas, and then went to Waynesboro, Pennsylvania in May 1960 to take a new position. He purchased a home there and had his furniture moved from Manhasset, N. Y.

On the termination of his employment contract as Vice President of General Aniline & Film Corporation on September 30, 1960, he was given a new contract as consultant at the same salary. This appears to be a frequent practice for executives in industry. He was not required to perform any services for the company. The contract was not based upon years of service or any other consideration except that he could not take employment with a competitive enterprise.

It is my opinion that under the circumstances outlined, petitioner left New York permanently in October 1960 and was not a resident for income taxes at any time in 1960 and that his income in 1960 was not severance pay and was not attributable to New York sources in 1960.

The annexed proposed determination directs cancellation of the assessment and refund of the amounts paid.

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/ VINCENT P. MOLINEAUX
Hearing Officer

VPM:ca

March 14, 1966

/s/ MARTIN SCHAPIRO
Approved

/s/ SAUL HECKELMAN
Approved

(done 29, 1966)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION :
OF :
MATTHEW M. GOUGER :
FOR REVISION OR REFUND OF PERSONAL INCOME :
TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR :
THE YEAR 1960 :

The taxpayer having filed application for revision or refund of personal income taxes for the year 1960, and a hearing having been held in connection therewith at the office of the State Tax Commission, 88 Centre Street, New York, N. Y. on the 26th day of June 1965 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer Matthew M. Gouger appeared in person and testified in connection therewith, and the taxpayer having been represented by Lowenstein, Pitcher, Hotchkiss & Parr; A. Jesse Duke, Jr., Esq., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That petitioner filed a New York State nonresident return for the year 1960 stating no New York adjusted gross income and claiming a refund in the amount of \$3,371.81 consisting of payments made by petitioner on New York estimated tax of \$1,000 and New York tax withheld by General Aniline & Film Corporation in the amount of \$2,271.81.

(2) That at the request of the Department of Taxation and Finance for information, petitioner filed a New York State resident return for the period January 1 to May 15, 1960 including all earned and unearned income for that period, and claimed a refund of \$1,756.97.

(3) That in October 1959, petitioner left New York State and took up residence in California for the purpose of assuming the position of President and Chief Executive Officer of Data Graphics Systems, a combined operation undertaken by General Aniline & Film Corporation and Douglass Aircraft Corporation.

(4) That he placed the home that he owned in Manhasset, N. Y. on the market, meanwhile leasing it furnished; that he never stayed in the house again and on subsequent visits to New York, totalling not more than 10 days in 1960, stayed at the New York Yacht Club.

(5) That the house in Manhasset was subsequently sold and the furniture moved to Waynesboro, Pennsylvania, the petitioners present residence.

(6) That petitioner was in the process of acquiring an automobile on a lease purchase arrangement and drove the car to California accompanied by his wife; that his daughter, then in college, spent her holidays with them in California.

(7) That petitioner's services with Data Graphics Systems were terminated in February 1960; that petitioner left California April 8, 1960 and stayed in the town of his origin in Texas; that in May 1960 he moved to Waynesboro, Pennsylvania, his present residence, where he is now employed.

(8) That for the entire time that he spent as President of Data Graphics Systems he was paid by General Aniline & Film Corporation by check sent to his California address pursuant to an employment contract dated August 27, 1958 under which he was to be paid a stated salary until September 30, 1960.

(9) That from October 1, 1960 to the end of that year, petitioner was paid the same salary by General Aniline & Film Corporation on a contract as a consultant.

(10) That petitioner performed no services for General Aniline & Film Corporation during the year 1960 other than as President and Chief Executive Officer of Data Graphics Systems.

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

DETERMINES:

(A) That the taxpayer was not a resident of the State of New York at any time during the year 1960.

(B) That the income received from General Aniline & Film Corporation for the year 1960 was paid pursuant to the two contracts, one for employment, one for consultation, upon which he was required to perform no services and no part of which was accruable as severance pay for work performed in New York.

(C) That assessment No. AB-036066 dated December 5, 1962 is incorrect and is hereby cancelled in full, and that petitioner is entitled to a refund of \$3,321.81 as claimed, AND IT IS SO ORDERED.

DATED: Albany, New York, on this 25th day of October , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

Commissioner

/s/

JAMES R. MACDUFF

Commissioner