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MEMORANDUM

*Income Tax Determinations**A-2**Guttman, Abraham A.
and
Sonya*

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

FROM: **Solomon Sies, Hearing Officer**

SUBJECT: **ABRAHAM A. GUTTMAN & SONIA GUTTMAN, his wife**

Assessment No. B-539339 - 1955
Assessment No. B-539340 - 1956

Article 16

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on October 14, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

There are two issues involved herein. The first is whether or not the taxpayers were residents of this state, for income tax purposes, during the years 1955 and 1956. Determinative of said issue is whether the taxpayers were domiciliaries of this state during the years involved and whether or not the taxpayer spent more than thirty (30) days within this State during each of said years or maintained a permanent place of abode within this state but did not maintain a permanent place of abode elsewhere. The second issue is whether the disallowance of \$1350.00 claimed for unreimbursed business expenses on the 1955 return was proper.

Although the taxpayers did not appear at the hearing, they were represented by Norman Levine, CPA, who stated he was familiar with the facts and testified in connection therewith. The taxpayer subsequently submitted additional documentary evidence.

The taxpayers did not file any return for the year 1956. The Income Tax Bureau issued a penalty assessment of \$300.00 for failure to file a return for the year 1956. The taxpayers claim that during the years 1955 and 1956, they did not maintain a permanent place of abode in New York but did maintain a permanent place of abode in Chicago, Illinois and spent less than thirty (30) days within this state during each of said years.

Prior to 1951, the taxpayer, Abraham A. Guttman, was living with his mother, a widow, at 1900 Unionport Road, Bronx, New York. Prior to that time, he was working in New York City for the American Jewish Congress and thereafter the United Jewish Appeal. The taxpayer was married in Detroit, Michigan, in 1951. A son, Robert, was born in San Francisco in 1952. The taxpayer submitted photostats of birth certificates of their other two children, one born in Chicago on September 22, 1954 and the other born in Chicago on November 21, 1957. The taxpayers maintained a safe-deposit box in the National Bank of Hyde Park in Chicago during the year 1956. There was introduced into evidence statements indicating that the taxpayer, Abraham A. Guttman had brokerage accounts with brokerage houses in Chicago, Illinois.

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It is claimed that the taxpayer and his family lived at an apartment hotel in Chicago, Illinois, during the period from 1953 to December 31, 1956.

Although the taxpayer claims that he was not a domiciliary of the State of New York during 1955 and 1956, in a letter to the Income Tax Bureau dated April 22, 1957 he wrote, in part, as follows:

"Please be advised that I am no longer a resident of the State of New York, having officially changed my residence, as of January 1, 1957, from 1900 Unionport Rd., New York 62, N.Y., to Chicago, Illinois. I am presently residing at 7729 S. Rouse, Chicago 49, Illinois."

The 1955 return indicates the taxpayers' address as 1900 Unionport Rd., New York, N.Y. and the name and address of the employer as "United Jewish Appeal, 165 West 46th Street, New York 36, N.Y.". It is apparent, therefore, that the taxpayers did not effectuate any change of domicile from New York to Illinois prior to January 1, 1957. In addition the taxpayer has failed to establish that he spent less than thirty (30) days within the State of New York during the year 1955.

On the 1955 return the taxpayer, Abraham A. Guttman, indicated that his average expenses amounted to \$16.00 per day; that he was away from home 310 days during said year; that said expenses aggregated the sum of \$4,960.00; that he was reimbursed for expenses at the rate of \$13.00 per day and was reimbursed by the employer to the extent of \$4,030.00; that he was only reimbursed for the operating expenses of the automobile used by him in connection with his work; that the depreciation of the car amounted to \$560.00 of which 75% or \$420.00 was allocated to business use so that the total expenses incurred by him for which he was not reimbursed amounted to \$1390.00. The taxpayer did not submit any evidence to substantiate the claimed reimbursed business expenses nor did he submit sufficient evidence which would warrant a finding that he was not adequately reimbursed by his employer for business expenses incurred by him.

The taxpayer, Abraham A. Guttman, during the year 1956, was a field representative for United Jewish Appeal covering the Middle West and working out of his base in Chicago, Illinois. He spent no time in New York except for an occasional visit. I find as a fact that the taxpayers spent less than thirty days within the State of New York during the year 1956; that they did not maintain a permanent place of abode in New York but did maintain a permanent place of abode in Chicago, Illinois during the year 1956.

I am of the opinion that the assessment for the year 1955 should be sustained but that the assessment for the year 1956 should be cancelled in full since it appears that during the entire year 1956, the taxpayer and his family maintained a permanent place of abode in Chicago, Illinois; that they did not maintain a permanent

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place of abode within the State of New York; that they spent less than thirty (30) days therein; that the taxpayers, therefore, were non-residents of this state, for income tax purposes, during the year 1956, in accordance with subdivision 7, section 390 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.

SOLOMON SIES

JAN 20 1966

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved.

SS/te (Jan 16, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

**ABRAHAM A. GUTMAN & SONJA GUTMAN,
his wife**

**FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEARS 1955 & 1956**

The taxpayers herein, Abraham A. Gutman and Sonja Gutman, his wife, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1955 and 1956, 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 14th day of October, 1964, before Solomon Sico, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by Norman Levine, CPA, testimony having been taken and the matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a joint resident New York income tax return for the year 1955 listing their residence as 1980 Unionport Road, Bronx, N.Y.; that the taxpayer, Abraham A. Gutman, reported salary compensation, as a fund raiser, from United Jewish Appeal listing the address of said employer as 167 W. 46th Street, New York City, N.Y.; that the taxpayer Abraham A. Gutman indicated on said return that he had spent 110 days away from home during said year on behalf of the aforementioned employer; that the cost of meals, hotel, etc. on an average of \$14.00 per day, amounted to \$4,960.00 for the year; that he reported depreciation of automobile used in connection with his duties on behalf of the employer in the sum of \$960.00; that he allocated 7% thereof or \$420.00 to business use; that the taxpayer was reimbursed by his employer for expenses in connection with his duties as fund raiser at the rate of \$13.00 per day; that he deducted the sum of \$1,350.00 as unreimbursed business expenses; that on January 29, 1959, the Department of Taxation

and Finance made an additional assessment against the taxpayers (Assessment No. B-539339) for the year 1955 disallowing the deduction of \$1350.00 claimed for reimbursed expenses on the ground that the taxpayer was adequately reimbursed for his business expenses by his employer and adjusted the medical expense accordingly.

(2) That the taxpayers did not file any New York State income tax return for the year 1956; that on January 29, 1959, the Department of Taxation & Finance made an additional assessment against the taxpayer (Assessment #B-539340) for the year 1956 imposing a penalty in the sum of \$300.00 for failure to file a 1956 return as requested; that the taxpayers contend that they were non-residents during the year 1956 and, therefore, were not required to file an income tax return for said year.

(3) That prior to 1951 the taxpayer Abraham A. Guttman was residing with his mother, a widow, at 1900 Unionport Road, Bronx, New York and was employed in the State of New York; that in 1951 the taxpayer was married in Detroit, Michigan; that a son was born to the taxpayers in San Francisco in 1952; that two other children were born to the taxpayers in Chicago, Illinois on September 22, 1954 and on November 23, 1957; that on April 22, 1957 the taxpayer wrote the Department, in part, as follows: "Please be advised that I am no longer a resident of the State of New York, having officially changed my residence, as of January 1, 1957, from 1900 Unionport Rd., New York 62, N.Y., to Chicago, Illinois. I am presently residing at 7729 S. Vassar, Chicago 49, Illinois"; that the taxpayers were domiciliaries of the State of New York during the years 1955 and 1956; that the taxpayers have failed to establish that they spent less than thirty (30) days within the State of New York during the taxable year 1955.

(4) That the taxpayer, Abraham A. Guttman, has failed to substantiate the unreimbursed expenses claimed on the income tax return for the year 1955 and has further failed to establish that he was not adequately reimbursed for business expenses by his employer.

(5) That during the entire year 1956 the taxpayer and his family maintained a permanent place of abode in Chicago, Illinois where

they lived in an apartment hotel; that during the year 1955, the taxpayer, Abraham A. Guttman, was employed as a field representative for United Jewish Appeal covering the Middle West and working out of his base in Chicago, Illinois for said employer; that he spent no time within the State of New York except for an occasional visit during said year; that during the year 1956 the taxpayers and their family did not maintain a permanent place of abode within the State of New York and spent, in the aggregate, less than thirty (30) days within this State.

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

DETERMINES:

(A) That during the year 1955 the taxpayers were residents of the State of New York, for income tax purposes, in accordance with subdivision 7, Section 350 of the Tax Law; that the deduction in the sum of \$1350.00 claimed by the taxpayers on their return for the year 1955 as more fully set forth in Findings (1) and (b) above was properly disallowed in accordance with subdivision 1, Section 360 of the Tax Law.

(B) That the assessment for the year 1955 (Assessment No. B-539339) is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the taxpayers' application for revision or refund with respect thereto be and the same is hereby denied.

(C) That during the year 1956, the taxpayers were non-residents for income tax purposes, in accordance with subdivision 7, Section 350 of the Tax Law.

(D) That the assessment for the year 1956 (Assessment No. B-539340) was not due and was not lawfully demanded and the aforesaid assessment be and the same is hereby cancelled in full.

AND IT IS SO ORDERED.

DATED: Albany, New York, on the 24th day of March, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

Commissioner