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MEMORANDUM

Income Tax Determin.
A-2
Lathrop, Leonard

TO: Commissioners Murphy, Palestin & Macduff
FROM: Solomon Sies, Hearing Officer
SUBJECT: LEONARD LATHROP

1954 Assessment No. B-637580
1955 Assessment No. B-637581
1956 Assessment No. B-662263
1957 Assessment No. B-662264

Formal Hearing

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on November 22, 1963. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are: (1) whether the assessments for the years 1954 and 1955 were timely made within the three (3) year statutory time period in accordance with subdivision 1, Section 373 of the Tax Law; (2) whether the taxpayer maintained a permanent place of abode within the State of New York during the years 1956 and 1957 and was therefore, for income tax purposes, a resident of the State of New York during said years in accordance with subdivision 7 of Section 350 of the Tax Law.

Prior and up to September 20, 1953, the taxpayer was a domiciliary and resident of the State of New Jersey residing with his wife and three children at Pleasant Valley Road, Matawan, New Jersey, where the taxpayer owned his own home. The taxpayer filed non-resident personal income tax returns for the years 1954 and 1955 indicating that he was a resident of the State of New Jersey and that he was employed by the Girl Scouts of U.S.A. in 1954 at 155 East 44th Street, New York, N.Y. and was employed during 1955 by Shippen Gear & Co., 37 East 39th Street, New York City, N.Y.

The taxpayer's former wife wrote a letter to the Income Tax Bureau in 1957 indicating that the taxpayer was not a resident of New Jersey. As a result there was an exchange of correspondence between the Department and the taxpayer. In March, 1959, the taxpayer was requested by the Income Tax Bureau to file amended returns for the years 1954 and 1955, which he did on May 20, 1959. On July 17, 1959, assessments were made against the taxpayer for the years 1954 and 1955 (Assessment Nos. B-637580 and B-637581 in amounts of \$129.14 and \$17.82, respectively). On October 19, 1959 partial cancellations were issued for the years 1954 and 1955 in the sums of \$24.14 and \$13.46, respectively, on the ground that the taxpayer was entitled to an exemption only of \$2,200.00 for himself and three (3) dependents since he was not living with his wife instead of the \$3,700.00 claimed by him, and the tax adjusted accordingly.

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RE: LEONARD LATHROP

The taxpayer filed resident personal income tax returns for the years 1956 and 1957 indicating that he was a New York resident and employed in the State of New York during said years and was divorced in March, 1956. On September 15, 1959 the Department of Taxation and Finance made additional assessments (Assessment Nos. B-662263 and B-662264 in the amounts of \$120.50 and \$567.01, respectively) against the taxpayer for the years 1956 and 1957 recomputing the tax on the basis of a non-resident taxpayer disallowing insurance premiums, alimony payments made to a non-resident, interest payments on mortgage and taxes on real property owned in New Jersey.

On September 20, 1953, the taxpayer removed from New Jersey and went to live with a cousin at 155 West 56th Street, New York City, N.Y. where he remained through 1957. The taxpayer at the time of his removal to New York City in 1953 intended to remain temporarily in this state and to remove to New Jersey upon the consummation of a matrimonial litigation pending in New Jersey. Because of unforeseen circumstances, he deferred his departure from the State of New York and his stay within the State of New York became one of indefinite duration. The taxpayer did not evince any intention nor did he actually effect a change of his domicile from New Jersey to New York but continued to remain a domiciliary of the State of New Jersey.

It is to be noted that for the years 1954 and 1955 the taxpayer did not omit from gross income an amount in excess of 25% of the amount of gross income stated on the original returns filed by him for said years. The assessments for the years 1954 and 1955 do not show any fraud or penalty assessments. I am of the opinion that the amended returns, which were filed after the time to file amended returns had lapsed, did not constitute a waiver of the time to issue assessments for said years. I am of the further opinion that the amended returns were not timely filed; that the assessments made for the years 1954 and 1955 were not made within the three (3) year statutory time limit as provided in subdivision 1 of Section 373 of the Tax Law and that said assessments should be cancelled.

In Prentice Hall New York Tax Service, Vol. 2, Page 55,224, Paragraph 55,310, it is stated:

"A home established for an indefinite period is no less permanent because of the realization of the possibility of future change if circumstances should warrant it. Therefore, a taxpayer whose work renders him subject to transfer from city to city can establish a permanent place of abode, since he will move only if and when transferred. On the other hand, a California executive receiving a five-year assignment to work in New York might buy a house there to live in for that period without it constituting a permanent place of abode, it being his intention to sell it when his work was completed."

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RE: LEONARD LATHROP

I am of the opinion that although the taxpayer was a domiciliary of the State of New Jersey during the years 1956 and 1957 his abode within the State of New York was of an indefinite duration and therefore constituted the maintenance of a permanent place of abode within the State of New York during the aforementioned years and that the taxpayer was, therefore, a resident of the State of New York, for income tax purposes, during said years within the intent and meaning of subdivision 7 of Section 350 of the Tax Law. I am of the further opinion that the Department cannot rely on the amended resident return of the taxpayer filed on May 20, 1959 for the year 1954 to issue an assessment for that year and then hold that the taxpayer, who filed resident returns for later years on its advice, was a non-resident.

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.

JAN 17 1966

SOLOMON SIES
Hearing Officer

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved.

SS/tc

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

LEONARD LATHROP

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEARS 1954, 1955, 1956 AND 1957.

The taxpayer, Leonard Lathrop, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1954 through and including 1957 and a hearing having been held in connection therewith on November 22, 1963 at the office of the State Tax Commission, 80 Centre Street, New York City, N.Y. before Solomon Sles, hearing officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally with a witness, testimony having been taken and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That prior and up to September 30, 1953, the taxpayer was a domiciliary and resident of the State of New Jersey residing with his wife and three children at Pleasant Valley Road, Matamoras, New Jersey, where the taxpayer owned his own home; that the taxpayer filed non-resident personal income tax returns for the years 1954 and 1955 indicating that he was a resident of the State of New Jersey and that he was employed by the Girl Scouts of U.S.A. in 1954 at 155 East 46th Street, New York City, N.Y.; that he was employed during 1955 by Shippen Beer & Co., 37 East 39th Street, New York City, N.Y.

(2) That in March, 1959, the taxpayer was requested by the Department of Taxation and Finance to file amended resident returns for 1954 and 1955; that, accordingly, the taxpayer filed amended returns for said years on May 30, 1959; that on July 17,

1979, assessments were made against the taxpayer for the years 1974 and 1975 (Assessment Nos. B-637700 and B-637701 in the amounts of \$129.14 and \$17.82, respectively); that on October 19, 1979 partial cancellations were issued for the years 1974 and 1975 in the sums of \$34.14 and \$13.46, respectively, on the ground that the taxpayer was entitled to an exemption only of \$2,200.00 for himself and three (3) dependents since he was not living with his wife instead of the \$3,700.00 claimed by him, and the tax adjusted accordingly.

(3) That the taxpayer filed resident personal income tax returns for the years 1976 and 1977 indicating that he was a New York resident and employed in the State of New York during said years and was divorced in March, 1976.

(4) That on September 15, 1979 the Department of Taxation and Finance made additional assessments (Assessment Nos. B-662263 and B-662264 in the amounts of \$190.50 and \$567.01, respectively) against the taxpayer for the years 1976 and 1977 recomputing the tax on the basis of a non-resident taxpayer disallowing insurance premiums, alimony payments made to a non-resident, interest payments on mortgage and taxes on real property owned in New Jersey.

(5) That on September 20, 1973 the taxpayer removed from New Jersey and went to live with a cousin at 175 West 56th Street, New York City, N.Y. where he remained through 1977; that during the aforementioned period he did not vote in either the State of New York or the State of New Jersey; that during the period from September 20, 1973 through 1977 the taxpayer's place of abode within the State of New York was of indefinite duration; that during the aforementioned period the taxpayer did not evince any intention nor did he actually effect a change of his domicile from New Jersey to New York but remained a domiciliary of the State of New Jersey; that during the years 1976 and 1977, the taxpayer maintained a permanent place of abode within the State of New York.

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

DECISION:

(A) That the amended returns for the years 1954 and 1955 filed by the taxpayer on May 20, 1959 were not timely filed; that the assessments for the years 1954 and 1955 issued on July 17, 1959 were not timely issued in accordance with Section 373 of the Tax Law; that, accordingly, the assessments for the years 1954 and 1955 (Assessment Nos. B-637530 and B-637531) were not due and were not lawfully demanded and that the aforementioned assessments are hereby cancelled in full, AND IT IS SO ORDERED.

(B) That although the taxpayer was not a domiciliary of the State of New York during the years 1956 and 1957 but maintained a permanent place of abode within the State of New York during the aforementioned years, he was a resident of the State of New York, for income tax purposes, during the years 1956 and 1957 within the intent and meaning of subdivision 7 of Section 390 of the Tax Law; that, accordingly, the assessments for the years 1956 and 1957 (Assessment Nos. B-662263 and B-662264) were not due and were not lawfully demanded and that the aforementioned assessments are 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

Commissioner

/s/

IRA J. PALESTIN

Commissioner

Commissioner