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*Income Tax Determinations*  
*1966* *A-2*

*Loring, Charles*

*Copy & other corres. see:*  
*E -*

*Equitable Life Assurance*  
*Society of the U. S.*

*May 19, 1966 (4/26/66 - 5/19/66)*

Miss Anne T. Kearns  
Secretary to Mr. Stuart McCarthy  
The Equitable Life Assurance Society  
of the United States  
1285 Avenue of the Americas  
New York, N. Y. 10019

Dear Miss Kearns:

In accordance with the requests made in your  
letter to the State Tax Commission under date of  
April 26, 1966, the following are enclosed:

1. A copy of a redetermination of the  
State Tax Commission in the matter  
of Charles and Jane Loring
2. Department of Taxation and Finance  
Release No. 16 for the year 1966  
dated March 30, 1966

Very truly yours,

EDWARD ROOK  
Secretary to the  
State Tax Commission

## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations**R-2**Loring, Charles &  
Jane*

TO: Commissioners Murphy, Palentin & Macduff

FROM: Solomon Sles, Hearing Officer

SUBJECT: CHARLES & JANE LORING

Petition for Redetermination of a Deficiency  
or for Refund of Personal Income Taxes under  
Article 22 of the Tax Law for the year 1962.

File No. 2-6378974

On August 17, 1965, a notice of formal hearing was mailed to the taxpayers scheduling a formal hearing in the above matter for September 22, 1965, at 10:00 A. M. The taxpayers defaulted in appearance at said hearing.

A letter was mailed to the taxpayers on September 27, 1965 advising them that unless they communicated with me for the purpose of rescheduling another hearing, their default would remain in effect. On December 20, 1965, another letter was mailed to the taxpayers advising them that unless they communicated with me within ten (10) days for the purpose of rescheduling the formal hearing, their default would remain in full force and effect and a determination would be made upon the record and in addition I further advised the taxpayers that if they request a rescheduling of the formal hearing they should submit copies of their New York State income tax returns for the years 1960 and 1961 showing any allocation of income attributable to both within and without the State of New York. The taxpayers failed to respond to said letters.

The issues involved herein are: (1) whether or not the payment of \$4,000.00 received by the taxpayer from his employer after termination of employment constitutes a pension which would be excludable from New York taxable income to a non-resident; (2) whether or not severance pay received by the taxpayer is includable in New York taxable income; and (3) allocation of earnings within and without the State of New York.

On his non-resident return the taxpayer, Charles Loring, submitted withholding tax statements from two employers but did not submit a separate allocation of income earned within and without the State of New York from each employer, although he was requested to do so. Accordingly, the audit changes recomputed the tax due on the total income reported.

At the preliminary hearing, the taxpayer submitted an agreement with his former employer, Stauffer Chemical Company, together with a statement of earnings from said employer and a statement of days worked both within and without the State of New York during the calendar year 1962. Subsequently, the taxpayer filed an amended return for the year 1962.

The taxpayer had been employed by Stauffer Chemical Company

TO:

Commissioners Murphy, Palestine & Macduff

Page 2

RE:

CHARLES & JANE LORING

as its sales manager for a period of about 17 years and had a vested right in this company's pension plan. He terminated his employment with Stauffer Chemical Company effective as of March 1, 1962. His salary from this company for the months of January and February, 1962, amounted to \$3,820.00. Pursuant to an agreement with his employer, Stauffer Chemical Company, the taxpayer received two months' full salary as severance pay in the sum of \$3,820.00. In addition, the company agreed to pay him, beginning with the month of May, 1962, and continuing for 99 months thereafter, the sum of \$900.00 per month.

The agreement provided, in part, that:

"These payments will be in lieu of any and all other payments or other obligations of Stauffer toward you in respect of your employment by us or the termination of your employment."

The agreement further provided that the aforementioned payments shall continue whether or not the taxpayer accepts employment elsewhere; that the taxpayer, having a vested right in the pension plan of the company, could elect to leave his own contributions with interest credits within the plan and receive a retirement allowance beginning at age 65 equal to the total benefits built up at the time of his termination with the company.

In the statement submitted by the taxpayer, it was ascertained that in the months of January and February, 1962, out of a total of 40 days worked for Stauffer Chemical Company, the taxpayer was employed in the state of New York for 30 days. The taxpayer was also employed during a portion of 1962 by Chemere Corporation, a New York corporation in the city of New York, and his salary from this corporation in 1962 amounted to \$3,653.00.

On February 17, 1965, the Income Tax Bureau wrote the taxpayers advising them that the \$4,000.00 received from Stauffer Chemical Company does not constitute a pension excludable from New York taxable and recomputed their tax liability on the basis of an allocation of 79% of the salary of the taxpayer, Charles Loring from Stauffer Chemical Company for months of January and February, 1962 and included severance pay and other payments from said company without any allocation. The severance pay and the other payments received by the taxpayer is predicated upon past services performed by the taxpayer, Charles Loring, for his employer.

In the determination upon formal hearing in the case of H. Cecil Powell (June 2, 1964) it was held that the allocation percentage with respect to the terminal pay received by the taxpayer would be allowed on the basis of the taxpayer's average allocation percentage for the past three years of his employment in accordance with Income Tax Bureau policy. In the instant case, however, the income tax returns for the taxpayers for the years 1960 and 1961 are

TO: Commissioners Murphy, Palestin & Macduff  
RE: CHARLES & JANE LORING

Page 3

no longer available. In addition, since the period of employment in 1962 was for only two months, I am of the opinion that this would not be a proper base for which to allow an allocation.

I am, therefore of the opinion that the severance pay in the sum of \$3,820.00 and the payments of \$4,000.00 should be considered as earnings attributable to sources within this state. However, with respect to the salary income from Stauffer Chemical Company received by the taxpayer during the months of January and February, 1962, the taxpayer is entitled to an allocation on the basis of thirty days worked within the State of New York and ten days outside of the State of New York so that the amount of income attributable to sources within the State of New York should be \$2,865.00 (or 75% of \$3,820.00) and that the itemized deductions should likewise be allocated on the basis of the amended return.

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 19 1966

SOLOMON SIES

Hearing Officer

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved.

ss/te

(Jan. 26, 1966)

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

-----  
**IN THE MATTER OF THE PETITION**

**OF**

**CHARLES & JANE LORING**

**FOR A REDETERMINATION OF A DEFICIENCY OR  
FOR REFUND OF PERSONAL INCOME TAXES UNDER  
ARTICLE 22 OF THE TAX LAW FOR THE YEAR  
1962.**  
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The taxpayers herein, 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 1962 (File No. 2-637897<sup>4</sup>) and a notice of hearing dated August 17, 1965 having been mailed on said date to the taxpayers scheduling a hearing at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. for September 22, 1965, at 10 A.M. before Solomon Sles, Hearing Officer of the Department of Taxation and Finance and the taxpayers having defaulted in appearance thereat, said default having been duly noted and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times hereinafter mentioned, the taxpayers were and still are residents of the state of Connecticut; that the taxpayers filed a New York State income tax non-resident return for the year 1962; that the taxpayer, Charles Loring, reported gross income from Stauffer Chemical Company, New York City, in the sum of \$11,640.00 and gross income from Chemura Corp., New York City, in the sum of \$3,695.00; that the taxpayer, Charles Loring, claimed an allocation of gross earnings from both employers and reported the sum of \$7,095.20 allocable to New York sources; that although the taxpayers were requested to submit separate allocations of income earned within and without the state of New York for each employer during the year 1962, they failed to do so; that accordingly, state-

ments of audit changes were made on April 27, 1964, by the Department of Taxation and Finance recomputing the tax on the total income of \$15,295.00 and a notice of deficiency was mailed to the taxpayer on said date; that subsequently the taxpayers submitted additional information concerning the income reported on their 1962 tax return; that on April 29, 1964, the taxpayers filed an amended return for the year 1962 and claimed an allocation of earnings within the state of New York in the sum of \$2,295.39 and New York itemized deductions in the sum of \$2,709.68.

(2) That the taxpayer Charles Loring had been employed by Stauffer Chemical Company as its sales manager for a period of about 17 years and had a vested right in this company's pension plan; that he terminated his employment with Stauffer Chemical Company effective as of March 1, 1962; that his salary from Stauffer Chemical Company for the months of January and February, 1962, amounted to \$3,000.00.

(3) That on February 15, 1962, the taxpayer, Charles Loring, entered into an agreement with Stauffer Chemical Company which is set forth in full as follows:

"This will serve to confirm with you the basis on which Stauffer will pay you a monthly amount subsequent to the termination of your employment with us effective March 1st 1962.

We will pay you two months' full salary subsequent to March 1st. Beginning with the month of May 1962 and continuing for 99 months thereafter, we will pay to you on the last day of each month the sum of \$900.00, reduced by any amounts which we are required by law to withhold for tax or other purposes. These payments will be in lieu of any and all other payments or other obligations of Stauffer toward you in respect of your employment by us or the termination of your employment, (other than benefits to which you may be entitled under the Stauffer pension plan) and are subject to the conditions mentioned below.

It is understood that these payments shall continue whether or not you accept employment elsewhere, but that Stauffer reserves the right to discontinue them at any time if you should engage in any activities or do anything which seriously jeopardizes the company's interests.

You agree, of course, that you will not disclose to or use for any other party any proprietary or confidential information known to you by reason of your association with Stauffer. Any such disclosure or use will result in immediate discontinuance of the monthly payments.

Stauffer shall have no obligation whatsoever to reinstate or establish payments discontinued for cause.

This will also confirm that you have a vested right in Stauffer's pension plan having had seventeen years of service with the company and you may therefore elect to leave your own contributions with interest credits within the plan and receive a retirement allowance beginning at age 55 equal to the total benefits built up at the time of your termination with the company."

(4) That pursuant to the aforementioned agreement, the taxpayer Charles Loring received from Stauffer Chemical Company severance pay equal to two months' salary in the sum of \$3,820.00 and in addition received from the aforementioned company the sum of \$4,000.00 (\$900.00 per month beginning May, 1962); that the total number of days worked by the taxpayer for Stauffer Chemical Company was 40 days; that he performed services within the state of New York for said company for thirty days in 1962; that beginning with September and for the balance of the year 1962 the taxpayer was employed in New York City by Chemagro Corp. and received a salary of \$3,655.00.

(5) That although the taxpayer contends that the sum of \$4,000.00 represents pension or annuity not subject to tax to a non-resident, the aforementioned payments were made in lieu of the obligation of the employer, Stauffer Chemical Company, in connection with the termination of the taxpayer's employment pursuant to the agreement set forth in Finding #3 above.

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

**DETERMINES AND DECIDES:**

(A) That the payments received by the taxpayer from Stauffer Chemical Company in the sum of \$3,820.00, severance pay, and \$4,000.00, in lieu of his termination of employment with said company, did not represent a pension or annuity exempt from New York State income tax for a non-resident in accordance with Section 632 (b) (2) of the Tax Law; that said payments constituted compensation and were attributable to New York State sources in accordance with Section 632 (b) (1) (B) of the Tax Law.



(C) That the tax liability of the taxpayer is hereby re-computed as follows:

Stauffer Company salary, allocated (75%)	\$ 2,865.00
Severance pay	1,800.00
Other payments	5,000.00
Salary, Chemore Corporation	1,455.00
New York Adjusted Gross Income	11,120.00
Federal Deductions prorated	2,111.44
Balance	9,008.56
Exemptions	1,000.00
New York Taxable Income	8,008.56
New York tax - 2 1/2% - 7%	\$ 444.72
Statutory credit	25.00
New York tax due	419.72
New York tax withheld	175.00
ADDITIONAL PERSONAL INCOME TAX DUE	\$ 244.72

(D) That, accordingly, the notice of audit changes and notice of deficiency is hereby corrected and modified in accordance with Determination (C) above; that the petition of the taxpayers for redetermination of 1962 deficiency except as herein modified above be and the same is hereby dismissed.

DATED: Albany, New York, on the 1st day of February, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
President

/s/

IRA J. PALESTIN  
Commissioner

/s/

JAMES R. MACDUFF  
Commissioner