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PHOTO MICROGRAPHICS INC.

Income Par Determinations McCormack, Donald C

Commissioners Marphy & Anglass

Selence Stor, Houring Officer

DOMALD C. NEGOWNACK

Potition for a Redetermination of a Reflecting or for Refund of Populari Income Taxes under Article 22 of the Tax Law for the year 1962.

A formal hearing use scheduled at New York City for December 18, 1964. The temporer unived personal appearance but submitted additional information and requested that the deciming be made upon the record as presently denotioned.

The insue involved herein is whether the tempers yes a posident of this State, for tem purposes, during the year 1968. Determinative of the issue are two questiones (a) whether or not the tempers when for low look and spent more than 30 days within this State during the year 1962; and (b) whether or not the tempers maintained a permanent place of shade and spent more than 10) days within the State during caid year.

Prior to July 1, 1958, the taxpayer was a resident of the State of Missouri having been desiciled in said state and having maintained a permanent place of abide there. At that particular time the taxpayer was employed by Shell Oil Company in its perfectly in wood River, Illinois. On July 1, 1958, the taxpayer was assisted to the head office of the Manufasturing Department of his employer, Shell Oil Company, in New York City, N.Y. to receive training as a technologist for a period of from three to five years and at the expiration of said period was to be transferred to a refinery out—side this State since Shell deer not operate any refinery in this State. The taxpayer sold his home in Forgumen, Missouri and received his furniture, furnishings and his family to New York where he purchased a home in Floatentville, N.Y., and maintained a permanent place of abode here from about August, 1958 to about June 26, 1968. At the time of transfer to New York neither the taxpayer nor his family intended to change their demicile from Missouri to Shate of New York. The employment of the taxpayer for Shell Oil Company in New York. The employment of the taxpayer for shell Oil Company in New York. The employment of the taxpayer to not temporarily in the Hetherlands and he was a suplayed for the biance of the year 1968, and remained there until July, 1963, when he returned to live in the Netherlands of Missouri. The taxpayer on his intense tax return for the year 1968 reported total income of \$12,641,79 and deducted therefrom his sum of \$6,647.62 income carpod after July 1, 1962 in the Netherlands.

re: Donald C. Megormagk

Article 502 of the Income Tax Regulations provided in

"The demicile is not changed by removal for a definite period or for particular purposes nor by abandemped of the old demicile until the acquisition of a non-tensis affected. To constitute a change, there must be intent to change, actual reseval and a now abode. A voting residence ugually evidences demicile."

I am of the opinion that the tempeyor did not intend to offectuate a change of dominite from the State of Hispania to the State of New York when he removed to this State for a Vempeyory period of time; that the tempeyor did not maintain a permanent phile of abode and spend mayor than 183 days within this State during only purply that the tempeyor was not, therefore, a regident of this Didto for income tax purposes during the year 1962 is accordance with the intent and meaning of Section 605 of the Tax Law.

For the reasons stated above, I recommend that the determination of the fax Counission in this matter to substantially in the form submitted herewith.

NOV 14 1966

SOLOMON SIES

CALL OF LAST

/s/ MARTIN SCHAPIRO

/s/ FRANCIS KELLIHER

Approved

85:81 (Nov. 18, 1966)

STATE OF HER YORK STATE TAK SOMMERSION

IN THE MALYLE OF THE PETITION

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Diam C. No. 18 Mile

FIR A REGION MAINATION OF A CONTRACTION OF POR SAFERY OF MAIN MAIN TROOTS THE TAX OF THE TAX 1962.

rest erabation of a deficiency of personal lecome taxes for the year 1962 (File So. 8695)25), and a notice of hearing having been asly sailed to the temperer on horomore o, 1964, scheduling a hearing to be half on processor 15, 1966 at the office of the state for Cosmission, 30 Centre street, Sew York sity, N.Y. before Science Sice, Hearing Officer of the separtment of texation and Finance; that the temperer having entered a resonal appearance at said hearing and having substitute assisting information and having respective assisting and having be said in this matter upon the record as presently constituted, and the result having seen only examined and somidered.

The tate Tea comission hereby finisi

resident return for the year 1962 to which he reported total total for the year 1962 to which he reported total total for the year 1963 in the sum of \$12,661.79 and deducted therefrom the sum of \$6,047.62 income earned for the period from July 1, 1962 income earned for the period from July 1, 1962 income earned for the period from July 1, 1962 income earned for the period from July 1, 1962 income total from the temper's wedges was \$172.80 and the temperer claimed a refund of \$66.92; that on Heron 9, 1964 the Department of temperation and finance insued to the temperer a statement of suits. Thenges and notice of deficitions in the sum of \$167.59, imposing an additional text upon the resident of the temperer for the year 1962 on the ground that he was a resident of the State of See Kerk Auring said year for lease tax purposes.

- (2) That orier to July 1, 1958, the taxpayer was a dominiliary of the itate of Missouris that at that particular time the bax, ager was employed by Shell Oll Company in its refinery in would Siver, Illinois; that on July 1, 1958 the temperor was assigned to work in the head office of the Hamufacturing Department of the Shell Oll Company is sen fork City, but, on a temporary basis for a period from 3 to 5 years to afford his abilitional training as a technologist and upon the termination of such training period he was to be transferred to a refinery located outside the State of New York since Shell does not operate a refinery in this States that the texpayer cold his home in Merguson. Missouri and he emi his family removed their furniture, furnishings and personal offects and purchased a home in Pleasantville. New York where they amintained a permanent place of abode from July or August, 1998 to about June 26, 1962; that at the time of their resoval to New York the taxpayer and his family had no intention of changing their doctable from the State of Missouri to the state of New York; that the temperer's employment is Now York for the Shall Oil Company was terminated in June, 1962 and be use re-assigned by his employer on said date to work in the dechariands; that the tax ayer, sold his residence in Flowsentville, New York, in June, 1962; that upon completion of his assignment in the Netherlands. the taxpayer and his family removed to Missouri in July, 1963.
- (3) That during the year 1962 the taxpayer was not a dominitary of the State of New York and sid not smintain a permanent place of abode sithin the State of New York for more than 183 days; that be was not a resident of the State of New York, for income tex purposes, Suring the year 1962.

Samed upon the foregoing findings, the State Tax Commission hereby

DECLIZA

petitioner's how fork State personal income tax for the year 1962 is incorrect; that the petition for redetermination is hereby granted and the notice of derigionary for the year 1962 is hereby cancelled and resolved.

DATED Albany, New York on the 21st day of November . 1966

STALE TAX COMMISSION

/s/	JOSEPH H. MURPHY
	Prosident

/s/ JAMES R. MACDUFF

, STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

DONALD C. McCORMACK

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962

Donald C. McCormack, having duly filed a petition for a redetermination of a deficiency of personal income taxes for the year 1962 (File No. 8695325), and a notice of hearing having been duly mailed to the taxpayer on November 9, 1964, scheduling a hearing to be held on December 18, 1964 at the office of the State Tax Commission, 80 Centre Street, New York City, N.Y. before Solomon Sies, Hearing Officer of the Department of Taxation and Finance; that the taxpayer having waived personal appearance at said hearing and having submitted additional information and having requested that a decision be made in this matter upon the record as presently constituted, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State income tax resident return for the year 1962 in which he reported total income for the year 1962 in the sum of \$12,641.79 and deducted therefrom the sum of \$6,047.62 income earned for the period from July 1, 1962 through December 31, 1962 in the Netherlands; that the New York tax withheld from the taxpayer's wages was \$172.80 and the taxpayer claimed a refund of \$64.92; that on March 9, 1964 the Department of Taxation and Finance issued to the taxpayer a statement of audit changes and notice of deficiency in the sum of \$162.59, imposing an additional tax upon the entire income of the taxpayer for the year 1962 on the ground that he was a resident of the State of New York during said year for income tax purposes.

- (2) That prior to July 1, 1958, the taxpayer was a domiciliary of the State of Missouri; that at that particular time the taxpayer was employed by Shell Oil Company in its refinery in Wood River, Illinois; that on July 1, 1958 the taxpayer was assigned to work in the head office of the Manufacturing Department of the Shell Oil Company in New York City, N.Y. on a temporary basis for a period from 3 to 5 years to afford him additional training as a technologist and upon the termination of such training period he was to be transferred to a refinery located outside the State of New York since Shell does not operate a refinery in this State; that the taxpayer sold his home in Ferguson, Missouri and he and his family removed their furniture, furnishings and personal effects and purchased a home in Pleasantville, New York where they maintained a permanent place of abode from July or August, 1958 to about June 26, 1962; that at the time of their removal to New York the taxpayer and his family had no intention of changing their domicile from the State of Missouri to the State of New York; that the taxpayer's employment in New York for the Shell Oil Company was terminated in June, 1962 and he was re-assigned by his employer on said date to work in the Netherlands; that the taxpayer, sold his residence in Pleasantville, New York, in June, 1962; that upon completion of his assignment in the Netherlands, the taxpayer and his family removed to Missouri in July, 1963.
- (3) That during the year 1962 the taxpayer was not a domiciliary of the State of New York and did not maintain a permanent place of abode within the State of New York for more than 183 days; that he was not a resident of the State of New York, for income tax purposes, during the year 1962.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

That the Statement of Audit changes adjusting the petitioner's New York State personal income tax for the year 1962 is incorrect; that the petition for redetermination is hereby granted and the notice of deficiency for the year 1962 is hereby cancelled and revoked.

DATED: Albany, New York on the 21st day of November , 1966.

STATE TAX COMMISSION

/s/ Joseph H. Murphy
PRESIDENT

/s/ <u>James R. MacDuff</u> COMMISSIONER