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Commissioners Murphy & Macduff

Solomon Sies, Hearing Officer

DONALD C. MCCORMACK

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

A formal hearing was scheduled at New York City for December 18, 1964. The taxpayer waived personal appearance but submitted additional information and requested that the decision be made upon the record as presently constituted.

The issue involved herein is whether the taxpayer was a resident of this State, for tax purposes, during the year 1962. Determinative of the issue are two questions: (a) whether or not the taxpayer was a domiciliary of the State of New York and spent more than 30 days within this State during the year 1962; and (b) whether or not the taxpayer maintained a permanent place of abode and spent more than 183 days within the State during said year.

Prior to July 1, 1958, the taxpayer was a resident of the State of Missouri having been domiciled in said state and having maintained a permanent place of abode there. At that particular time the taxpayer was employed by Shell Oil Company in its refinery in Wood River, Illinois. On July 1, 1958, the taxpayer was assigned to the head office of the Manufacturing 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 outside this State since Shell does not operate any refinery in this State. The taxpayer sold his home in Ferguson, Missouri and removed his furniture, furnishings and his family to New York where he purchased a home in Pleasantville, N.Y., and maintained a permanent place of abode here from about August, 1958 to about June 26, 1962. At the time of transfer to New York neither the taxpayer nor his family intended to change their domicile from Missouri to State of New York. The employment of the taxpayer for Shell Oil Company in New York City, N.Y. was terminated on June 30, 1962 and the taxpayer on or about that time sold his home in Pleasantville, N.Y. The taxpayer was assigned by his employer to work temporarily in the Netherlands and he was so employed for the balance of the year 1962 and remained there until July, 1963, when he returned to live in the State of Missouri. The taxpayer on his income tax return for the year 1962 reported total income of \$12,641.79 and deducted therefrom the sum of \$6,047.62 income earned after July 1, 1962 in the Netherlands.

TO: Commissioners Murphy & Macduff

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RE: DONALD G. MCCORMACK

Article 902 of the Income Tax Regulations provided in part:

"The domicile is not changed by removal for a definite period or for particular purposes nor by abandonment of the old domicile until the acquisition of a new one is effected. To constitute a change, there must be intent to change, actual removal and a new abode. A voting residence usually evidences domicile."

I am of the opinion that the taxpayer did not intend to effectuate a change of domicile from the State of Missouri to the State of New York when he removed to this State for a temporary period of time; that the taxpayer did not maintain a permanent place of abode and spend more than 183 days within this State during said year; that the taxpayer was not, therefore, a resident of this State for income tax purposes during the year 1962 in 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 Tax Commission in this matter be substantially in the form submitted herewith.

NOV 14 1966

SOLOMON SIES

Leasing Officer

/s/ MARTIN SCHAPIRO

Approved

/s/ FRANCIS KELLIHER

Approved

SS:EM

(Nov. 18, 1966)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

RONALD C. MCCORMACK

FOR A RE-EVALUATION OF A DEFICIENCY ON
FOR SAID OF PERSONAL INCOME TAX UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962.

Ronald C. McCormack, having duly filed a petition for a
re-evaluation 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 hear-
ing to be held on December 15, 1964 at the office of the State Tax
Commission, 50 Centre Street, New York City, N.Y. before Solomon Sles,
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, 1962.

(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 charges 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/ JAMES R. MACDUFF
Commissioner

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/ James R. MacDuff
COMMISSIONER