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Income Tax Determinations

BUREAU OF LAW

MEMORANDUM Sanson, Charles E. A-Z and Dorothy

TO: Commissioners Murphy, Palestin & Nadoff

FROM: Solomon Sies, Hearing Officer

SUBJECT: CHARLES E. & DOROTHY SANSON

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 #22-8685383

On November 3, 1965, a notice of formal hearing was mailed to the taxpayers scheduling a formal hearing in the above matter for December 6, 1965 at 3:30 P. M. The taxpayers defaulted in appearance at said hearing.

The issue involved herein is whether the taxpayers who were domiciliaries of this State prior to their change of domicile to the State of North Carolina on May 5, 1962, were required to include in their New York State income tax return income earned in four different states where the taxpayer, Charles E. Sanson, worked and lived temporarily prior to such actual change of domicile.

Information received from Miss L. Donovan, Files Section, Income Tax Bureau, discloses that the taxpayers, Charles E. and Dorothy Sanson, filed New York State resident income tax returns for the years 1960 and 1961, listing their address at 10 Sylvan Road, Smithtown, N.Y.

The taxpayers filed a New York State income tax return for the year 1962 in which the taxpayer Charles Sanson reported income as a salesman attributable to the State of New York in the sum of $1,407.03 and attached thereto a withholding tax statement (IT-2102) showing total wages paid by his employer, the Osborn Manufacturing Company, of Cleveland, Ohio, in the sum of $10,207.63. It appears that the taxpayer was domiciled in the State of New York and maintained a permanent place of abode within this State during the months of January and February, 1962, and was employed by his employer in this State during said period of time. He was thereafter assigned to and worked and lived in Georgia, Virginia, Tennessee and Florida during the period from March 1, 1962 to May 4, 1962 before moving to North Carolina where he effected a change of domicile. His stay in the four above mentioned states was of a temporary nature. He has been living in North Carolina since May 5, 1962. The taxpayer also filed a 1962 North Carolina State income tax return and listed the sum of $2,653.06 which he earned in the State of North Carolina during said year.

The Income Tax Bureau issued a statement of audit changes so as to include the earnings of the taxpayers up to the time that they actually effected a change of domicile to the State of North

Carolina. The amount of earnings attributable to the State of New York was computed to be $7,573.77. The Federal itemized deductions were adjusted so as to exclude the North Carolina deductions and additional personal income taxes were imposed in the sum of $201.73.

The taxpayer contends that New York is only entitled to the income which he actually earned within the State of New York during the year 1962, to wit, the sum of $1,407.03.

I am of the opinion that the taxpayer did not effect an actual change of domicile until his removal to the State of North Carolina on May 5, 1962; that the taxpayer maintained temporary places of abode in the States of Georgia, Virginia, Tennessee and Florida, during the period from March 1 to May 4, 1962; that the income of the taxpayers prior to their actual change of domicile to North Carolina was, therefore, attributable and subject to New York income taxes.

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

Hearing Officer

FEB 15 1966

/s/ M. SCHAPIRO

Approved

/s/ S. HECKELMAN

Approved

SS/ts (March 14, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

CHARLES F. SANSOM AND DOROTHY SANSOM, HIS WIFE

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

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 #B-[illegible]) and a notice of hearing dated November 3, 1965 having been mailed on said date to the taxpayers scheduling a formal hearing at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. for December 6, 1965, at 3:30 P. M., before Solomon Sies, 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 the taxpayers, Charles F. and Dorothy Sansom, filed a joint New York State income tax resident return for the year 1962 listing their home address as [illegible] Wensley Drive, Charlotte, North Carolina; that the taxpayer Charles F. Sansom reported on said return total wages in the sum of $1,407.03 as salesman for Osborn Manufacturing Company of Cleveland, Ohio; that he reported total itemized deductions from Federal return in the sum of $341.87; that he claimed an exemption in the sum of $500.00 (2/12th's of $3,000.00); that he requested a refund of $29.20; that attached to said return was a withholding tax statement (Form IT-2102) showing total wages paid to the taxpayer Charles F. Sansom during the year 1962 in the sum of $10,206.63 by the Osborn Manufacturing Company of Cleveland, Ohio; that attached to the afore-

mentioned tax return was a statement from the taxpayer Charles F. Sansom to the effect that he was transferred from the State of New York to the State of North Carolina, and even though his Form IT-2102 indicates total wages paid in 1962 as $10,206.63, his only income from the State of New York during the year 1962 was $1,407.03.

(2) That the taxpayers Charles F. and Dorothy Sansom filed Joint New York State income tax resident returns for the years 1960 and 1961, listing their home address as 10 Sylvan Road, Smithtown, New York; that prior to May, 1962, the taxpayers were and remained domiciliaries of the State of New York; that the taxpayers maintained a permanent place of abode within the State of New York during the entire months of January and February, 1962; that the taxpayer Charles F. Sansom, was employed within the State of New York by the Osborn Manufacturing Company of Cleveland, Ohio during the entire months of January and February, 1962; that during the period from March 1, 1962 to May 4, 1962, the taxpayer Charles F. Sansom lived and worked in the States of Georgia, Virginia, Tennessee and Florida, where he earned the sum of $1,146.54 as salesman for the Osborn Manufacturing Company, his employer; that during the period from March 1, 1962 to May 4, 1962, the taxpayer, Charles F. Sansom, did not maintain any permanent place of abode in the States of Georgia, Virginia, Tennessee and Florida, but that such places of abode were merely of a temporary nature, prior to the aforementioned taxpayer's permanent removal to the State of North Carolina, where he effected a change of domicile on May 5, 1962; that the taxpayer Charles Sansom filed a North Carolina individual income tax return for the year 1962 showing wages earned in said state in the sum of $2,653.06; that the taxpayers filed a U.S. income tax return for the year 1962 listing total wages of the taxpayer, Charles F. Sansom from the Osborn Manufacturing Company in the sum of $10,206.63 and total itemized deductions in the sum of $1,397.92 or a net income of $8,808.71; that the taxpayers indicated on said return sale of old residence on May 4, 1962 in the sum of $21,000.00.

(3) That on January 6, 1964, the Department of Taxation and Finance issued a statement of audit changes against the taxpayers for

the year 1962 so as to exclude the income of the taxpayer Charles W. Sansom, earned in the State of North Carolina and to include the earnings of the taxpayer in the states of Georgia, Virginia, Tennessee and Florida so that the total earnings attributable to the State of New York were computed to be in the sum of $7,593.57, on the ground that the taxpayers had not effected a change of domicile until their removal to the State of North Carolina where they purchased a home on May 5, 1962; that the Department of Taxation and Finance in its audit changes adjusted the Federal itemized deductions in the sum of $1397.92 so as to exclude the North Carolina deductions in the sum of $797.05 and adjusted the New York deductions in the sum of $587.00; that the taxpayers were credited with the withholding taxes in the sum of $39.20 so that the New York itemized deductions allowed amounted to $551.67 and the balance in the sum of $7,001.90, attributable to New York sources; that the taxpayers were allowed an exemption in the sum of $500.00 so that the New York taxable income was computed to be $6,501.90; that the tax on the New York State taxable income was computed in the sum of $235.10, less statutory credit (5/10th's of $5.00) in the sum of $4.17 so that the New York tax was computed to be $230.93 less New York State tax withheld in the sum of $39.20 and additional personal income tax computed to be due in the sum of $201.73 and a notice of deficiency was issued accordingly therefor.

(b) That the taxpayers did not effect an actual change of domicile from the State of New York to the State of North Carolina until May 5, 1962; that the income of the taxpayer, Charles W. Sansom attributable to the State of New York during the year 1962 amounted to $7,593.57.

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

RENDITIONS AND DECIDES:

(A) That the taxpayers were and remained domiciliaries of the State of New York during the period from January 1, 1962 up to and including May 4, 1962; that the taxpayers did not effect an actual change of domicile from the State of New York to the State of North

Carolina until May 5, 1962; that the taxpayers maintained temporary places of abode in the States of Georgia, Virginia, Tennessee and Florida during the period from March 1, 1962 to May 4, 1962; that the taxpayers were and remained residents of the State of New York, for income tax purposes, during the period from January 1, 1962 up to and including May 4, 1962 in accordance with §605, Article 22 of the Tax Law.

(3) That the income of the taxpayer, Charles W. Sansen, during the year 1962 in the sum of $7,593.37 was properly attributable to sources within the State of New York; that, accordingly, the audit changes made against the taxpayers herein and the notice of deficiency issued pursuant thereto are correct; that same do not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's petition for redetermination of a deficiency or for refund of personal income taxes for the year 1962 be and the same is hereby dismissed.

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

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ IRA J. PALESTIN
Commissioner

/s/ JAMES R. MACDUFF
Commissioner