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MEMORANDUM

Income Tax Determinations

A-2

*Schmitt, Arthur J. and
Louise S.*

TO: **Commissioners Murphy, Palestin & Macduff**

FROM: **Solomon Bies, Hearing Officer**

SUBJECT: **ARTHUR J. SCHMITT & LOUISE S. SCHMITT, his wife**

**Petition for Redetermination of a Deficiency or
for Refund of Personal Income Taxes under Article
22 of the Tax Law for the years 1960 and 1961**

File #1-8565323

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on September 24, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayers were residents of this state for income tax purposes during the years 1960 and 1961, in accordance with section 605 of the Tax Law. Determinative of the issue is the question of whether the taxpayers were domiciliaries of the state of New York and spent more than 30 days within this state during the taxable years 1960 and 1961.

Prior to June, 1960, the taxpayers were domiciliaries of the state of New York and resided at 36-06 212th Street, Bayside, Queens, N.Y. where they owned their own home. The taxpayer, Arthur J. Schmitt, was employed by International Telephone and Telegraph Corporation in its New York City office as assistant comptroller.

In June, 1960, Mr. Schmitt was assigned by his employer to work in Brussels, Belgium as vice president and comptroller of International Telephone & Telegraph Europe Inc., a wholly owned subsidiary which was being formed as an administrative and coordinating office for the parent corporation's investments in Europe. Prior to leaving for Brussels, Belgium, the taxpayer sold his residence in Queens and he and his family sailed for Belgium on June 8 with all of their belongings. All of his furniture and furnishings were crated and shipped to him in Brussels. Upon their arrival in Brussels, Belgium, the taxpayer rented an apartment under a three-year lease. The taxpayer and his family never evinced any intention of surrendering their American citizenship or nationality (Minutes of Hearing, p. 17). While in Belgium, the taxpayer paid income tax there as a foreign individual resident in Belgium. The taxpayer was re-assigned to a similar position he previously held with International Telephone & Telegraph Corp. in its New York office on September 2, 1961.

RE: ARTHUR J. SCHMITT & LOUISE S. SCHMITT, his wife

At that time, he brought back his family with him and purchased a house at 45 Degwood Lane, Manhasset, N.Y. His furniture and furnishings were shipped back to the U.S. The cost of the expense of moving the taxpayer's furniture and belongings to Belgium and relocating there was borne by the employer (Taxpayer's Exhibit #1). The taxpayer's roots were always in the State of New York where he has lived almost all of his life.

The taxpayer contends that he changed his domicile from New York State to Brussels, Belgium when he was assigned by his employer to work abroad in June, 1960; that it was his understanding that he was to remain abroad for an indefinite period of not less than three years; that he did not vote in the U.S., by absentee ballot in 1960 and that it was his impression that he was not eligible to vote in 1961.

The definition of the words "resident individual" in section 605 of Article 22 (personal income tax) of the Tax Law is based upon and similar to the definition of the word "resident" in section 350(7) of Article 16 (personal income tax) of the Tax Law. Article 501 of the Article 16 Income Tax Regulations provided that in order to constitute a change of domicile there must be both "intent to change and actual change". Of similar import is section 102.2(d)(2) of the proposed Article 22 Personal Income Tax Regulations which provides that "domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there."

A person does not become a domiciliary of a foreign country merely by leaving and working abroad. Section 102.2(d)(3) of the proposed Article 22 Personal Income Tax Regulations provides, in part, as follows:

"For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently and not to return."

I am of the opinion that the taxpayer Arthur J. Schmitt was assigned by his employer to work temporarily in Belgium; that the taxpayers during the period from June 1, 1960 to September 2, 1961 maintained a temporary place of abode in Belgium; that the taxpayers have failed to establish that they have effected a change of domicile from New York to Brussels, Belgium and since they and

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

ARTHUR J. SCHMITT & LOUISE S. SCHMITT,
his wife

FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEARS
1960 AND 1961.

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 years 1960 and 1961 (File No. 1-876-8383) and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on September 24, 1965, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Arthur J. Schmitt, appeared personally and testified in connection therewith and was represented by Davis Polk Wardwell Sunderland & Kiendl, Esqs., by John A. Corry, Esq., Of Counsel, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Arthur J. and Louise S. Schmitt, filed a joint New York State income tax resident return for the year 1960 in which they reported gross income attributable to the State of New York for the period from January 1, to June 8, 1960, in the sum of \$16,440.51; that the return indicated Federal adjusted gross income for the year 1960 in the sum of \$39,990.74; that the aforementioned taxpayers filed a joint New York State income tax resident return for the year 1961 in which they indicated that the total income as reported on their Federal return for the year 1961 amounted to \$46,006.70, and deducted the sum of \$35,964.96 claimed to represent income earned as a non-resident during the period from January 1, 1961 to September 1, 1961 and reported gross income attributable to New York in the sum of

\$10,461.74 for the period from September 2, 1961 to December 31, 1961; that on May 25, 1964, the Department of Taxation and Finance made a statement of audit changes in which the entire income of the taxpayers for the years 1960 and 1961 was attributable to the state of New York on the ground that the taxpayers did not relinquish their New York domicile and since they spent more than thirty (30) days within the state of New York during each of the aforementioned years, they are deemed to be residents of this state, for income tax purposes, for the full taxable years 1960 and 1961 and recomputed the additional personal income tax due from the taxpayers in the sums of \$1,989.89 and \$2,787.23 for the years 1960 and 1961, respectively and accordingly issued a notice of deficiency therefor.

(2) That prior to June 1, 1960, the taxpayers lived at 36-06 212th Street, Bayside, Queens, N.Y., where they owned their own home; that the taxpayer Arthur J. Schmitt, was employed in the New York City office of International Telephone & Telegraph Corporation as comptroller; that up to June 1, 1960, the taxpayer, Arthur J. Schmitt, had lived in New York almost all his life.

(3) That in June, 1960, the taxpayer was assigned by his employer to work in Brussels, Belgium as vice president and comptroller of International Telephone & Telegraph Europe Inc., a wholly owned subsidiary which was being formed as an administrative and coordinating office for the parent corporation's investments in Europe; that on June 1, 1960, the taxpayers sold their residence in Bayside, Queens and they and their family sailed for Brussels, Belgium on June 8, 1960, together with all of their furnishings and belongings; that the employer reimbursed the taxpayer for travel and relocation expenses in connection with his move to Brussels, Belgium; that upon his arrival in Brussels, Belgium the taxpayer rented an apartment; that the taxpayers and their family maintained a temporary place of abode in Brussels, Belgium during the period from June 8, 1960 to September 9, 1961; that the taxpayer Arthur J. Schmitt was re-assigned in September, 1961 to a similar position formerly held by him to work for his employer in New York City; that in connection therewith the taxpayer and his family removed all

all of their belongings and possessions and the taxpayer purchased a home in Manhasset, New York on September 2, 1961, where he has resided ever since.

(4) That the taxpayer and his family never had any intention of giving up, surrendering or renouncing their American citizenship or nationality; that the taxpayers have failed to establish that they intended to and actually did effectuate a change of domicile from the State of New York to Brussels, Belgium; that during the years 1960 and 1961, the taxpayers were and remained domiciliaries of the State of New York and spent more than thirty (30) days during each of said years within this state.

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

ADJUDICATES AND DECIDES:

(A) That the taxpayers were and remained domiciliaries of the state of New York during the entire years of 1960 and 1961 and since they spent more than thirty (30) days within the state of New York during each of said years, they are deemed to have been residents of the State of New York, for income tax purposes, during the years 1960 and 1961, in accordance with the intent and meaning of section 605 of the Tax Law.

(B) That, accordingly, the notice of deficiency for the years 1960 and 1961 is correct and is hereby sustained and the petition of the taxpayers for redetermination of a deficiency or for refund of personal income taxes for the years 1960 and 1961 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

Commissioner