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P. *Income Tax Determinations*
1966
Tonnese, Jorgen A-Z
and Lis

Commissioners Murphy and MacCall

Solomon Rice, Hearing Officer

JORGES and LIS G. TONNESSEN

**Petition for Determination of
Deficiency of Personal Income
Taxes Under Article 22 of the
Tax Law for the Year 1962.**

A notice of hearing and letter were mailed to the taxpayers who are presently residing in West Germany, advising that in the event they could not appear for a formal hearing, they could nevertheless submit additional information which would be considered by the Commission together with the information already contained in the record as it is presently constituted. The taxpayers did not appear but submitted additional information and have consented to a decision based upon the record as it is presently constituted.

The issue involved herein is whether the taxpayers were residents of this state, for income tax purposes, for the taxable year 1962. Determinative of the issue is whether the taxpayers were domiciliaries of this state and spent more than thirty days within the state.

The taxpayers are nationals of Denmark. It appears that they entered United States as resident aliens and intended to remain in the United States for an indefinite period. Prior to February 15, 1962 the taxpayers were domiciled in this state and maintained a permanent place of abode in Schenectady, New York. They lived in a rented apartment. The taxpayer, Jorgen Tonnese, was employed by General Electric Company in Schenectady, New York. In February 1962 the taxpayer, Jorgen Tonnese, was assigned by his employer, General Electric Company to work in Argentina. This assignment was temporary and was to last from one to three years. The taxpayers surrendered their apartment in Schenectady on or about February 15, 1962 and removed with all their belongings to Argentina where they remained from March 1, 1962 until July 15, 1963. On March 11, 1963, the taxpayer Jorgen Tonnese wrote his employer advising it of his desire to leave the operation in Argentina in order to resume his education in Europe. It appears

Re: Jorgen and Lis G. Tonnesen
contn'd

that the aforementioned taxpayer has an M.S.M.E. degree from the University of Denmark which is not acceptable for entrance to United States colleges and he therefore requested a leave of absence from the company effective August 1, 1962. The employer wrote the taxpayer trying to prevail upon him to remain in Argentina for another six months to a year; that a leave of absence could not be granted. The taxpayer and his family returned to the United States in August of 1963 and arranged to secure employment with a subsidiary of General Electric Company in West Germany.

However, it was necessary for the taxpayer to undergo a period of training at the main office of the company in Schenectady. The taxpayers accordingly rented an apartment at 102 Edward Street, Schenectady, New York where they remained until January 1964 when they left for West Germany and have been continually residing there ever since. The taxpayer submitted to the hearing officer a photo-static copy of a re-entry permit issued by the Immigration and Naturalization Service on January 2, 1964, expiring on January 1, 1965 and extended to January 1, 1966. The taxpayer indicated that he has not applied for an extension of the permit for re-entry to this country.

The taxpayers filed a joint United States Individual Income tax return for the year 1962 which included all of the wages of the taxpayer, Jorgen Tonnesen received from General Electric Company both in New York State and in Argentina. The taxpayers also filed a joint New York State resident return for the year 1962 in which they only included the wages earned by the taxpayer, Jorgen Tonnesen, while employed in the State of New York and omitted the wages earned in Argentina. It appears that the taxpayer did not file a Form-911 with the Internal Revenue Service claiming an exemption for earnings abroad. It is to be noted that the taxpayer, prior to his assignment in Argentina, advised his employer of his intention to pursue his studies in Europe and that he never intended to change his domicile from New York to Argentina.

The taxpayers contend that they effected a change of domicile from New York to Argentina in March 1962; that the assignment of employment to Argentina was of indefinite duration and that they maintained a permanent place of abode in Argentina from March 1, 1962 until July 18, 1963.

Re: Jorgen and Lis G. Tonnesen
contn'd

Article 502 of the Income Tax Regulations provides, in part, that, "a domicile once obtained continues until a new one is acquired. The avowed intention controls, and there must be both intent to change and actual change; the mere belief that one has performed some act which is the equivalent of a change is not sufficient. 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." In the instant case, the taxpayers had no intention of changing their domicile from New York to Argentina, nor could their abode in Argentina be held to constitute a permanent place of abode. The taxpayer, Jorgen Tonnesen, even before his acceptance of employment in Argentina had intended to continue his education in Europe. Although he intended to give up his domicile in New York, he did not actually effect such change until he removed to West Germany in January 1964.

I am, therefore, of the opinion that the taxpayers were and remained domiciliaries of the State of New York during the taxable year 1962 and since they spent more than thirty days within this state during said year, they were residents of this state, for tax purposes, within the intent and meaning of §605, (a) (1) of the Tax Law.

For the above reasons, I recommend that the determination of the State Tax Commission in this matter be substantially in the form submitted herewith.

SS:nbl OCT 31 1966

/s/

SOLOMON SIES

Hearing Officer

/s/

MARTIN SCHAPIRO

APPROVED

/s/

SAUL HECKELMAN

APPROVED

(Nov 22, 1966)

**STATE OF NEW YORK
STATE TAX COMMISSION**

In the Matter of the Petition of

**JOHN G. TUNNEN and
LIS G. TUNNEN, his wife**

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

**FILE NO.
2-669417**

The above named taxpayers having filed a petition for redetermination of a deficiency or for refund of Personal Income Tax under Article 22 of the Tax Law for the year 1962 and a Notice of Hearing dated December 15th, 1962 having been mailed on said date to the taxpayers scheduling a hearing to be held at the office of the State Tax Commission at 80 Centre Street, New York, N. Y. for January 15th, 1963 at 2:30 P.M., before Solomon Sien, Hearing Officer of the Department of Taxation and Finance; and the taxpayers having submitted additional information and having consented to a decision based upon the record as it is presently constituted and the matter having been duly examined and considered.

The State Tax Commission hereby finds:

(1) That at all of the items hereinafter mentioned the taxpayers were and still are nationals of Denmark; that prior to February 15th, 1962, the taxpayers were domiciled in this State and maintained a permanent place of abode in Schenectady, New York; that they lived in a rented apartment; that the taxpayer, Jürgen G. Tunnén was employed by General Electric Company in Schenectady, New York; that in February, 1962, the taxpayer, Jürgen G. Tunnén was assigned by his employer, General Electric Company to work in Argentina on a temporary basis to last from one to three years; that the taxpayers surrendered their apartment in Schenectady on or about February 15th, 1962 and removed with all their belongings to Argentina where they remained until July 1963; that on March 11th,

1963, the taxpayer, Jürgen G. Tannous wrote his employer advising it of his desire to leave the operation in Argentina in order to resume his education in Europe; that accordingly the taxpayers returned to the United States and rented an apartment in Schenectady in August, 1963 at which time the taxpayer arranged to secure employment with a subsidiary of General Electric Company in West Germany and he was required to undergo a period of training at the main office of General Electric Company at Schenectady for a period of about six months; that the taxpayers remained in Schenectady until January 1964 when they left with all their belongings for West Germany and have continually resided there ever since.

(2) That the taxpayers filed a joint U.S. individual income tax return for the year 1964 which included all of the wages of the taxpayer, Jürgen G. Tannous received from General Electric Company both in New York State and in Argentina; that the taxpayers also filed a joint N.Y. State resident return for the year 1962 in which they included only the wages received from General Electric Company by the taxpayer, Jürgen G. Tannous while employed in the State of New York; that on October 5th, 1964 the Department of Taxation and Finance issued a statement of audit changes so as to include the entire income earned during the year 1962 and accordingly issue a Notice of Deficiency therefor.

(3) That the taxpayers were and remained domiciliaries of the State of New York and spent more than thirty days in the State of New York during the taxable year 1962.

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

DECIDES:

(A) That since the taxpayers were and remained domiciliaries

of the State of New York and spent more than thirty days of said taxable years in this State, they were residents of the State of New York, for income tax purposes, during the entire year 1962 in accordance with the provisions of §605, (a) (1) of the Tax Law.

(2) That accordingly, the statement of audit charges and Notice of Deficiency are correct; that the same do not include any tax or other charge which could not have been lawfully demanded and that the Petition of the taxpayers for a substantiation of said deficiency for the year 1962 be and the same is hereby dismissed.

DATED: ALBANY, N. Y. on the 23rd day of November 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

SECRETARY

/s/

JAMES R. MACDUFF

COMMISSIONER

SS:mb1