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*Income Tax Determinations**A-2*

MEMORANDUM

*Drolsbaugh, Carlton S.**and Mary*

TO: Commissioners Murphy, Macduff and Conlon

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: Petition of Carlton S. and Mary Drolsbaugh for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1961 and 1962

The above-entitled matter came on for a hearing before me on October 31, 1966 at 80 Centre Street, New York, New York. The appearances and exhibits were as noted on the transcript.

The issue involves the question of whether or not the taxpayers were residents of New York during the years in issue.

Taxpayers filed joint Federal and New York resident returns for 1961 and 1962 from their home at Patterson, New York. The Income Tax Bureau determined that additional taxes were due for unreported income from taxpayers' business in Connecticut, and issued a notice of deficiency. Taxpayers now contend that they were not residents during 1961 and 1962.

The taxpayers concede that they resided in New York until November 1959 at which time they acquired a nursing home business in Connecticut. Thereafter they rented an apartment near their Connecticut business, in addition to maintaining their home in New York. Carlton S. Drolsbaugh was at all times employed in New York and commuted to his Manhattan office every day. Taxpayers' home in Patterson, New York was given as his address to his employer, a telephone and listing in the Patterson phone directory was maintained, and contributions were made to the local church there. He kept his New York driver's license and renewed it in 1962. No claim of Connecticut residency was asserted until receipt of the notice of deficiency.

At the hearing taxpayer Mary Drolsbaugh testified as follows: That the house in Patterson was purchased before 1951; that it became taxpayers' home and permanent residence; that a telephone was maintained at the home in Patterson from 1957 to date; that Carlton S. Drolsbaugh was regularly employed at his office in Manhattan; that the telephone, lights and gas were maintained at the house in Patterson after 1959; that a man was paid to look after the house; that in Norwalk, Connecticut, the taxpayers maintained an apartment at 45 High Street; that the taxpayers voted in Patterson, New York in 1959; that the

taxpayers never voted in Connecticut; and that they received mail at Patterson, New York.

No effort was made on taxpayers' returns to segregate deductions. All taxes, medical expenses, licenses and other deductible items, whether incurred in Connecticut, New York or elsewhere, were taken as deductions on the New York joint returns, only the income from the Connecticut business being excluded therefrom (Tax Commission Exhibits "D", "E", "H"). In both years taxpayers answered the question, "Were you a New York State resident during the entire year?" affirmatively.

Taxpayer's exhibits, consisting of a Connecticut driver's license, and bills addressed to taxpayer in Connecticut or from Connecticut creditors, are of little probative value. Taxpayer also had a New York driver's license (a deduction for renewal cost was taken on the 1962 return) and obviously received bills for telephone and utility services in New York, and from New York creditors, although these were not offered.

For the reasons set forth above, I am of the opinion that during 1961 and 1962 the taxpayers were domiciled in New York and maintained a permanent place of abode within the State; and that they were residents of New York within the meaning of section 605 of the Tax Law.

The decision of the Tax Commission should be in the form submitted herewith.

/s/

Alfred Rubinstein

~~SEALING OFFICER~~

AR:aw
Enc.

February 6, 1967

(Feb. 8, 1967)

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....
IN THE MATTER OF THE PETITION :
OF :
CARLTON S. AND MARY BROLSBAUGH :
FOR REDETERMINATION OF A DEFICIENCY :
OR FOR REFUND OF PERSONAL INCOME :
TAXES UNDER ARTICLE 22 OF THE TAX LAW :
FOR THE YEARS 1961 AND 1962 :
.....

Carlton S. and Mary Brolsbaugh having petitioned for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1961 and 1962 (File No. 2-8949828) and a hearing having been held before Alfred Rubinstein, Hearing Officer of the State Tax Commission, at 80 Centre Street, New York, New York, on October 11, 1966, and Mary Brolsbaugh having appeared in person, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That the taxpayers filed a resident personal income tax joint return for 1961 reporting New York taxable income of \$10,839.53, omitting therefrom income earned in the amount of \$472.98 from a business conducted by them in Connecticut; that taxpayers filed a resident personal income tax joint return for 1962 reporting New York taxable income in the amount of \$11,214.28, omitting therefrom income earned in the amount of \$6,118.93 from a business conducted by them in Connecticut; that the Income Tax Bureau determined by notice of deficiency and statement of audit charges dated May 11, 1964 that additional taxes were due, in the amount of \$36.24 for 1961 and \$433.09 for 1962, holding taxpayers' Connecticut earnings taxable to

New York; that for 1961 and 1962 taxpayers filed Federal income tax returns as residents of New York.

(2) That during 1961 and 1962 taxpayer Carlton S. Broisbough was employed regularly, full time, in New York, at his place of employment in Manhattan, and spent more than 183 days of each year in New York.

(3) That in 1951, the taxpayers purchased a one-family house in Patterson, New York at which they resided until November 1959; that the taxpayers concede that they were residents of this State up to that time; that in 1959 the taxpayers acquired a nursing home business in Connecticut, and rented an apartment in the City of Norwalk; that they continued to maintain their home in Patterson, New York thereafter, receiving mail there, maintaining telephone service and utilities, and employed a man to look after the house; that taxpayers' home in Patterson, New York was a permanent dwelling house; that taxpayers never voted in Connecticut; that taxpayer Carlton S. Broisbough had a valid New York driver's license which he renewed in 1962.

(4) That on their joint income tax returns filed for 1961 and 1962 taxpayers stated their residence to be Patterson, New York, and answered the question, "Were you a New York State resident during the entire year?" affirmatively on each return; that on their New York returns taxpayers deducted expenses and deductions from all sources within and without the State, but failed to include the income from their nursing home business on the ground that such was "income earned wholly outside the State of New York".

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

(A) That during 1961 and 1962 the taxpayers were domiciled in New York and maintained a permanent place of abode within the State; that accordingly they were residents of New York within the meaning of section 605 of the Tax Law.

(B) That taxpayers' earnings from their Connecticut business in the sum of \$472.58 in 1961 and in the sum of \$6,118.93 in 1962 were includable in their New York taxable income for such years.

(C) That accordingly, the notice of deficiency imposing additional taxes and interest upon the taxpayers for 1961 and 1962 is correct, and the amount set forth therein is due and owing together with additional interest and other statutory charges; that the said notice of deficiency does not include any tax or other charges which could not have been lawfully demanded, and that taxpayers' petition for redetermination or refund with respect thereto be and the same hereby is denied.

March

Dated: Albany, New York the 3rd day of February, 1967 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER