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Income Tax Determinations

**BUREAU OF LAW
MEMORANDUM**

Kenny, Hugh A-2 J-

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: HUGH J. KENNY

**Matter of the Application for Revision or
Refund of Personal Income Taxes Under
Article 16 of the Tax Law for the Year 1957**

A hearing with reference to the above-captioned matter was scheduled to be held before me at 80 Centre Street, New York, New York on May 22, 1967. The taxpayer, who resides in Germany, defaulted.

The taxpayer filed an income tax return in which he reported income of \$4,299 which he earned while residing in New York State. He did not report his income of \$6,020 earned during the year while he resided in the Netherlands.

An assessment was issued for the year 1957 (Assessment No. AB-052007) assessing additional tax, penalty and interest due in the amount of \$190.09 on the basis that the taxpayer was domiciled in New York and spent more than 30 days within New York State and his entire income of \$10,319 was subject to New York State income tax.

The taxpayer was a resident of New York State from January 1, 1957 to May 31, 1957 where he was employed by the California Texas Oil Company. On May 31, 1957 he moved to the Netherlands with his family, furniture and personal possessions where he was employed by the Galtex Petroleum Maatschappij from June 1, 1957 to November 1, 1961. The taxpayer now resides in Germany where he is employed by Galtex Oil (Germany) GMBH. The taxpayer has been residing abroad continuously since June 1, 1957. The taxpayer intends to reside abroad indefinitely and does not intend to reside in New York State again.

While the available facts in this matter present a close question as to whether or not the taxpayer changed his domicile when he moved to the Netherlands it is my opinion that he did in fact change his domicile since he remained out of the country for the past 10 years. This is a nonreoccurring matter. The taxpayer was not subject to New York income tax since 1957 regardless of his place of domicile since he did not spend 30 days within New York State in any year.

For the reasons stated above I recommend that the determination of the State Tax Commission granting the taxpayer's application be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVBIac
Enc.

June 7, 1967

ms 87

6-22-67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION :
OF :
HUGH J. KENNY :
FOR REVISION OR REFUND OF PERSONAL :
INCOME TAXES UNDER ARTICLE 16 OF THE :
TAX LAW FOR THE YEAR 1957 :

The taxpayer filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1957 and a hearing having been scheduled for May 22, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer defaulted and the file in this matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed income tax return for the year 1957 in which he reported income of \$4,299 which he earned while residing in New York State; that the taxpayer did not report \$6,080 of income which he earned while residing in the Netherlands.

(2) That an assessment was issued for the year 1957 (Assessment No. AB-032007) on November 12, 1963 assessing additional tax, penalty and interest in the amount of \$190.09 on the basis that the taxpayer was domiciled in New York State for the year 1957 and spent more than 30 days within New York State and his entire income earned during the year is subject to New York State income tax.

(3) That the taxpayer resided in New York State from January 1, 1957 until May 31, 1957 while he was employed by the

California Texas Oil Company; that on May 31, 1957 the taxpayer left New York City with his family and personal effects and took up residence in the Netherlands where he was employed by Caltex Petroleum Nantechippi; from June 1, 1957 until November 1, 1961; that the taxpayer then became employed by Caltex Oil (Germany) GmbH in Frankfurt, Germany where he now resides.

(4) That the taxpayer has been residing abroad continuously since June 1, 1957; that he intends to reside abroad indefinitely and does not intend to reside in New York State again; that the taxpayer changed his domicile from New York State to the Netherlands on June 1, 1957.

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

DETERMINES:

(A) That the income earned by the taxpayer in the Netherlands during 1957 was not subject to New York State income tax since such income was earned after the taxpayer had changed his status from resident to nonresident.

(B) That accordingly, the assessment for the year 1957 (Assessment No. AB-052007) for personal income taxes, penalty and interest was not proper and should be cancelled and the same is cancelled in full.

DATED: Albany, New York this 10th day of July , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER