

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

Income Tax Determinations
BUREAU OF LAWMEMORANDUM *King, John J. and Eleanor T.* A-Z

TO: Commissioners Murphy, Macduff & Conlon

FROM: Solomon Sies, Hearing Officer

SUBJECT: JOHN J. and ELEANOR T. KING

Application for revision or refund of personal income taxes under Article 22 of the Tax Law for the years 1960 and 1961.

Petition for a redetermination of a deficiency or refund of personal income taxes under Article 22 of the Tax Law for the years 1962 and 1963.

A hearing in the above matters was held at the New York City office on September 22, 1966.

The issue involved is whether the taxpayers were residents during the years in issue, as defined by Section 605 of the Tax Law.

Until March, 1960 the taxpayers, husband and wife, were living in a one-family dwelling located at 126 Reis Avenue, Massapequa, New York, which they owned as joint tenants. In March, 1960 they sold this house and purchased another one-family dwelling located at 25 New Point Place, Amityville, New York, as joint tenants. They have owned and lived in this house since then.

Until March, 1960, the taxpayer, John J. King, was employed in the State of New York as a design engineer. On March 28, 1960, he entered into a written agreement of employment with Development Design Company and was assigned to work for an aircraft corporation in Morton, Pennsylvania. He resigned from this position in November 1960 and was thereafter employed by Missiltron, Inc. in West Hempstead, from November 1960 until March 1961. Subsequently, he was employed by Development Designers and also General Electric Company to work in Pennsylvania until June 1962. Thereafter, he worked for Consultants and Designers, Inc. in New York City from June 1962 to November 1962. He was thereafter employed by Eastern Design Company and assigned to work in Connecticut and was employed there through 1963. The taxpayer, John J. King, while employed outside the State of New York, lived in furnished rooms, in a trailer and in hotels. While employed outside the State of New York, he would visit his family in New York on week-ends and

holidays. He admits that he spent more than thirty days within the State of New York during each of the years in issue. The taxpayer Eleanor T. King, a bookkeeper, was employed solely within the State of New York and continuously lived at the home of the taxpayers in New York during each of the years 1960 through and including 1963.

The taxpayers filed joint non-resident income tax returns for the years 1960, 1961 and 1962, and a combined income tax non-resident return for the year 1963 in which they only reported the income earned by them solely within the State of New York. The Income Tax Bureau issued assessments for the years 1960 and 1961 and a notice of deficiency for the year 1962 adjusting the income of the taxpayers to include their entire income earned during the years in issue as reported for Federal income tax purposes. For 1963 a statement of refund adjustment (Form IT 36) was issued, adjusting the income of the taxpayers to include their entire income earned within and without the State on the ground they were residents and granting refund to the husband and wife in the amounts of \$252.04 and \$19.16 respectively on the basis of excess State withholdings deducted at the source.

The taxpayer John J. King contends that his wife was a New York resident whereas he was a resident of each of the State in which he was employed during the years in issue and that his income earned outside the State is not taxable.

In formal hearing case in Matter of Julius Gornick (determination dated January 31, 1967), where the facts were almost similar, it was held that the taxpayer was a resident for income tax purposes.

I am of the opinion that during the years in issue, the taxpayers were and remained domiciliaries of the State of New York, maintaining a permanent place of abode there and spent more than 30 days within the State during each of said years and are therefore residents of this State within the intent and meaning of Section 605 (a) (1) of the Tax Law.

For the foregoing reasons, I recommend that a determination for the years 1960 and 1961 and a decision for the years 1962 and 1963 in this matter be substantially in the forms submitted herewith.

JUN 21 1967


Hearing Officer

6-29-67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

JOHN J. and ELEANOR T. KING,

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEARS 1960 and 1961.

The above named taxpayers having filed applications for revision or refund of personal income taxes under Article 22 of the Tax Law for the years 1960 and 1961, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, on the 22nd day of September, 1966, before Solomon Sies, Hearing Officer of the Department of Taxation & Finance, at which hearing the taxpayer, John J. King appeared personally, testimony having been taken, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, John J. King and Eleanor T. King, his wife, filed New York State income tax non-resident returns for the years 1960 and 1961 in which they indicated their home address as "25 New Point Place, Amityville, New York"; that for 1960 the taxpayers indicated Federal adjusted gross income in the amount of \$8,743.67, but only reported total income attributable to New York sources in the amount of \$4,435.42; that for 1961, the taxpayers indicated Federal adjusted gross income in the amount of \$9,253.82, but only included as attributable to New York sources, the amount of

\$4,156.32; that on April 12, 1962 and on June 22, 1962, the Department of Taxation & Finance made additional assessments of personal income tax against the taxpayers for the years 1960 and 1961 (Assessment Nos. AB 006722 and AB 012254, respectively) adjusting their total income as reported for Federal income tax purposes, on the ground that they were residents of the State of New York during said years and as such were taxable on their entire income irrespective of where it was earned.

(2) That until March 1960, the taxpayers were living in a one-family dwelling located at 125 Bois Avenue, Massapequa Park, New York, which they owned as joint tenants; that in March, 1960, they sold this house and purchased another one-family dwelling located at 25 New Point Place, Amityville, New York, as joint tenants; that they have owned and lived in this house since then.

(3) That until March, 1960, the taxpayer, John J. King, was employed in the State of New York as a design engineer; that on March 28, 1960, the taxpayer, John J. King, entered into a written agreement of employment with Development Design Company whereby he was to perform services for Barthold Aircraft Corporation in Norton, Pennsylvania; that said taxpayer resigned from this position in the early part of November, 1960; that he started to work for Missiltro, Inc. in West Hempstead, New York, on November 15, 1960 where he was employed until March, 1961; that, thereafter, he was employed by Development Designers and General Electric Company in Pennsylvania until June, 1962; that thereafter he worked for Consultant Designs, Inc. in New York City from June 1962 to November 1962; that he was subsequently employed by Eastern Design Company and assigned to work in Connecticut through 1963; that said taxpayer while employed outside the State of New York lived in furnished rooms, in a trailer and in hotels; that he would visit his family in New York on week-

ends and holidays; that he spent more than thirty days within the State of New York during each of the years in issue.

(4) That the taxpayer, Elinor T. King, was employed as a bookkeeper solely within the State of New York and continuously lived at the home of the taxpayers in the State of New York during the years 1960 through and including 1963.

(5) That the taxpayer John J. King contends that his wife, Elinor T. King, was a resident of the State of New York during the years in issue, whereas he was a resident of each of the states in which he was employed during said years, and that his income earned outside the State of New York is not subject to New York State personal income tax.

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

DETERMINES:

(A) That during the entire years of 1960 and 1961, the taxpayers were domiciled in the State of New York and maintained a permanent place of abode within the State; that the taxpayers spent more than thirty days during each of the taxable years 1960 and 1961 within the State of New York and were, therefore, residents of the State of New York within the intent and meaning of Section 605 (a) (1) of the Tax Law.

(B) That, accordingly, the assessments for the years 1960 and 1961 (Assessment Nos. AB 006722 and AB 012254, respectively) are correct; that the same do not include any tax or other charge which could not have been lawfully demanded, and that the taxpayers' applications for revision or refund filed with

respect thereto be and the same are hereby denied.

Dated: Albany, New York, on the 10th day of July 1967.

STATE TAX COMMISSION

/s/ _____ JOSEPH H. MURPHY
PRESIDENT

/s/ _____ JAMES R. MACDUFF
COMMISSIONER

/s/ _____ WALTER MACLYN CONLON
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

**JOHN J. AND ELEANOR T. KING FOR REDETER-
MINATION OF A DEFICIENCY OR FOR REFUND
OF PERSONAL INCOME TAXES UNDER ARTICLE
22 OF THE TAX LAW FOR THE YEARS 1962 and
1963.**

The above named taxpayers 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 1962 and 1963, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 22nd day of September, 1966, before Solomon Sies, Hearing Officer of the Department of Taxation & Finance, at which hearing the taxpayer, John J. King, appeared personally, testimony having been taken, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, John J. King and Eleanor T. King, his wife, filed a joint New York State income tax non-resident return for the year 1962 in which they indicated Federal adjusted gross income for said year in the amount of \$10,893.17; that they only reported total income from New York sources the amount of \$4,264.01; that the taxpayers filed a New York State combined income tax non-resident return for the year 1963 in which they indicated joint Federal adjusted gross income of \$16,866.06; that no income was reported for the husband attributable to New York sources; that the wife reported income attributable

to New York sources in the amount of \$1,186.53; that on June 1, 1964, the Department of Taxation & Finance issued a statement of audit changes against the taxpayers for the year 1963 imposing additional personal income tax so as to include their entire income as reported for Federal income tax purposes on the ground that they were New York residents during the entire year 1963 and, accordingly, issued a notice of deficiency therefor; that on August 11, 1964, the Department of Taxation & Finance issued a statement of refund adjustment (Form IT-36) adjusting the income of the husband in the amount of \$15,679.53 and the wife in the amount of \$1,186.53 on the ground that both husband and wife are deemed to be New York residents for the full taxable year 1963 and all such income received during said year was held to be taxable; that the tax liability of the taxpayers was recomputed; that in accordance with said recomputation, the taxpayer John J. King was entitled to a refund in the amount of \$252.04 and the taxpayer Eleanor T. King was entitled to a refund of \$19.16.

(2) That until March 1960, the taxpayers were living in a one-family dwelling located at 125 Bois Avenue, Massapequa Park, New York, which they owned jointly; that in March, 1960, they sold this house and purchased another one-family dwelling located at 25 New Point Place, Amityville, New York, as joint tenants; that they have owned and lived in this house since then.

(3) That until March, 1960, the taxpayer, John J. King, was employed in the State of New York as a design engineer; that on March 28, 1960, the aforementioned taxpayer entered into a written agreement of employment with Development Design Company whereby he was to perform services for Berthold Aircraft Corporation

in Morton, Pennsylvania; that said taxpayer resigned from this position in the early part of November, 1960; that he started to work for Missiltren, Inc. in West Hempstead, New York, on November 15, 1960, where he was employed until March, 1961; that, thereafter, he was employed by Development Designers and General Electric Company in Pennsylvania until June, 1962; that he was thereafter employed by Eastern Design Company and assigned to work in Connecticut through 1963; that said taxpayer while employed outside the State of New York lived in furnished rooms, in a trailer and in hotels; that he would visit his family in New York on weekends and holidays; that he spent more than thirty days within the State of New York during each of the years in issue.

(4) That the taxpayer, Eleanor T. King, was employed solely within the State of New York and continuously lived at the home of the taxpayers in the State of New York during the years 1960 through and including 1963.

(5) That the taxpayer, John J. King, contends that his wife, Eleanor T. King was a resident of the State of New York during the years in issue, whereas he was a resident of each of the states in which he was employed during said years, and that his income earned outside the State of New York is not subject to personal income tax.

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

(A) That during the entire years 1962 and 1963, the taxpayers were domiciled in the State of New York and maintained a permanent place of abode within the State; that the taxpayers spent more than thirty days during each of

the taxable years 1962 and 1963 within the State of New York and were, therefore, residents of the State of New York within the intent and meaning of Section 605 (a) (1) of the Tax Law.

(B) That, accordingly, the statement of audit changes and notice of deficiency for the year 1963 are correct; that the same does not include any tax or other charge which could not have been lawfully demanded; that the statement of refund adjustment issued to the taxpayers for the year 1963 is correct; that the taxpayers are not entitled to any further refund thereof; that, accordingly, the petition for redetermination filed by the taxpayers with respect to the years 1962 and 1963 be and the same is hereby denied.

Dated: Albany, New York, on the 10th day of July 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner