

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

PHOTO MICROGRAPHICS INC.

Income Tax Determinations
**BUREAU OF LAW
MEMORANDUM**

A. Z
Partridge, Robert A.
and Nancy K.

TO: Commissioners Murphy, Maeduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of
Robert A. and Nancy K. Partridge
for Refund of Personal Income
Taxes under Article 22 of the Tax
Law for the Years 1963 and 1964

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on February 7, 1967. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The taxpayers filed joint nonresident tax returns for the years 1963 and 1964 in which the taxpayer, Robert A. Partridge, reported income as a commissioned officer in the United States Public Health Service in the amounts of \$2,890 in 1963 and \$6,769.12 in 1964 while stationed at Buffalo, New York. He also reported interest income on a bank account in New York in the amounts of \$6.72 in 1963 and \$43.39 in 1964. The taxpayer filed claims for a refund of \$22.30 for the year 1963 and \$130.99 for the year 1964 alleging that he was never a resident of New York and that his wages as a commissioned officer earned in New York are not subject to tax contending that the compensation was exempt by virtue of the Soldiers' and Sailors' Civil Relief Act of 1940, Section 514, Title 50, U.S.C. App. Section 574 as made applicable to persons in the Public Health Service by 62 Stat. 623, Title 50, U.S.C. App. Section 464.

Prior to 1963 the taxpayer, Robert A. Partridge, was domiciled in Pennsylvania where he resided with his parents. Upon completion of his medical internship, he was married on June 22, 1963. His wife was also domiciled in Pennsylvania. On June 30, 1963 he was commissioned in the United States Public Health Service. He was not detailed by proper authority for duty with any branch of the armed forces. In August, 1963 he was assigned to Buffalo where he rented an apartment from month to month. He continued to live there until June 29, 1965 when he was discharged into the inactive reserve corps. He then returned to Pennsylvania. His draft classification is 4-A which signifies that he had over one year of active duty and received an honorable discharge. The taxpayer was not otherwise a member of the armed forces.

The taxability of compensation received as a member of the commissioned corps of the United States Public Health Service has been discussed in two opinions of Counsel Kassell, dated December 15, 1953 and October 30, 1956, copies of which are attached hereto. In the opinions it is pointed out that unless the compensation is received while detailed for duty with a branch of the armed forces the compensation is subject to New York personal income taxes.

Since the taxpayer did not reside 183 days in New York in 1963, he was not a resident for tax purposes as defined by section 606(2) of the Tax Law. As a nonresident, his interest income for 1963 was not derived from New York sources (Tax Law section 632(2)). During 1964 the taxpayer was a resident for tax purposes since he maintained a permanent place of abode and was present within the state the entire year. As a result, his income from all sources was subject to personal income tax.

The taxpayers filed amended returns in which they filed separately. These returns are being treated as applications for refund only since their tax returns as originally filed results in a lower tax than would be computed by the amended returns.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter granting the taxpayer's petition for refund to the extent of 20 cents and otherwise denying the same be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:pg
Enc.
May 31, 1967

6-26-67

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

ROBERT A. AND NANCY K. PARTRIDGE

FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEARS 1963 AND 1964

The taxpayers herein having filed a petition for refund of personal income taxes under Article 22 of the Tax Law for the years 1963 and 1964 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on February 7, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer, Robert A. Partridge, appeared and testified and the taxpayers were represented by counsel and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed joint nonresident tax returns for the years 1963 and 1964 in which they reported income which the taxpayer, Robert A. Partridge, received for services as a commissioned officer in the United States Public Health Service in the amounts of \$2,820 in 1963 and \$6,769.12 in 1964 while stationed at Buffalo, New York; that the taxpayers also reported interest income on a New York bank account in the amounts of \$6.72 in 1963 and \$43.39 in 1964.

(2) That the taxpayers filed claims for refund of taxes withheld from compensation received while stationed at Buffalo, New York in 1963 and 1964 on the basis that it was received as a commissioned officer on active duty in the United States Public

Health Service and was not subject to the income tax as income from New York sources by virtue of an exemption under the Soldiers' and Sailors' Civil Relief Act of 1940; that the taxpayers also claimed that their interest income was not subject to the income tax since they were nonresidents; that the taxpayers' claims for refund of income taxes were denied.

(3) That the taxpayers were domiciled in Pennsylvania; that on June 22, 1963 the taxpayers were married; that until June 30, 1963 the taxpayer, Robert A. Partridge, resided in Pennsylvania; that on June 30, 1963 he was commissioned an officer in the United States Public Health Service; that in August 1963 he was assigned to Buffalo, New York.

(4) That the taxpayers lived in Buffalo, New York from August 1963 until June 29, 1965 when the taxpayer, Robert A. Partridge, was discharged into inactive reserve corps; that upon his discharge the taxpayers returned to Pennsylvania; that on his discharge the taxpayer, Robert A. Partridge, was classified 4-A by his Selective Service Board; that the draft classification 4-A signifies that the taxpayer had completed over one year of active duty and received an honorable discharge.

(5) That while the taxpayer lived in Buffalo he was given an allotment for living expenses; that the taxpayers rented an apartment while living in Buffalo on a month-to-month basis.

(6) That the taxpayer was not a member of any branch of the armed forces; that the taxpayer was not detailed for duty with any branch of the armed forces while serving as a commissioned officer of the United States Public Health Service.

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

DECIDES:

(A) That the compensation received by the taxpayer, Robert A. Partridge, as a commissioned officer in the United States Public Health Service while assigned at Buffalo, New York was derived from or connected with New York sources under the provisions of section 632 of the Tax Law and is not exempt from taxation by the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 since the taxpayer was not a member of any branch of the armed forces nor detailed for duty within the branch of the armed forces.

(B) That the taxpayers were not residents of New York for tax purposes during 1963 since the taxpayers were not domiciled in New York and did not spend in the aggregate more than 183 days in the state during the year 1963; that accordingly only income from New York sources was subject to the income tax.

(C) That the taxpayers' interest income in the amount of \$6.72 earned in 1963 was not subject to income tax since it was not derived or connected from New York sources; that the taxpayers are entitled to a refund of \$6.20 for tax computed and paid on such income.

(D) That the taxpayers were residents of New York for tax purposes during the year 1964 since they maintained a permanent place of abode in the state during that year and spent more than 183 days within the state; that accordingly their taxable income from all sources was subject to the New York income tax.

(E) That accordingly, the taxpayers' petition for refund of personal income taxes is hereby granted to the extent of \$6.20

and is otherwise denied for the year 1963 and is hereby denied
in full for the year 1964.

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