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*Randall, Darley T. &
Zene Pyle*

Commissioners Murphy and Macduff

Solomon Sles, Hearing Officer

DARLEY T. & ZENE PYLE RANDALL

**Application for Revision or Refund
of Personal Income Taxes under
Article 22 of the Tax Law for the
Year 1960**

A hearing with reference to the above matter was held before me at the New York City Office on June 17, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayers during the year 1960 were residents of this State, for income tax purposes, in accordance with Section 605, Article 22 of the Tax Law. Determinative of the issue is whether or not the taxpayers were domiciliaries of the State of New York and spent thirty days therein.

The facts are undisputed. Prior to 1958, the taxpayer, Darley T. Randall, was a student at Yale University and resided with his parents at Syosset, New York when not in attendance in the University. The taxpayer graduated Yale in 1958 and immediately thereafter enlisted in the U.S. Army for a period of three years with a further enlistment of one year. He entered into the Armed Forces of the U.S. from the State of New York and served in the Armed Forces continuously from June, 1958 until May, 1962 when he was discharged. In March, 1959, the taxpayer, Darley T. Randall was married to Zene Pyle who was at that time a domiciliary of the State of New York. After the marriage the taxpayers rented a furnished home at Pacific Grove, Calif. where the husband was stationed and lived there continuously from March, 1959 until March, 1960. The taxpayer's first child was born in Calif. in February, 1960. In March, 1960, the taxpayer, Darley T. Randall, received military orders to proceed to Camp Dix to await further sailing orders for overseas duty in Germany. While awaiting such orders and while on furlough, the taxpayers and their child lived at the residence of the parents of Darley T. Randall in Syosset, N.Y. during the period from March 20, 1960 to May 12, 1960 at which time they sailed for Germany where they lived in a hotel and furnished apartments in Munich, Germany until the discharge from military service of the taxpayer, Darley T. Randall, in May, 1962 when they removed to Peapack, N.J. where they have resided since.

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RE: DARLEY T. & ZENE PYLE RANDALL

Originally the taxpayers filed a resident New York State combined income tax return for 1960 and paid the tax computed thereon in the sum of \$461.90. On November, 1962, the taxpayers filed an application for refund of the taxes paid together with an amended joint New York State Non-Resident return contending that they were non-residents of the State of New York during the year 1960. They further contend that they were not domiciliaries of the State of New York during the year 1960; that they were domiciliaries of the State of California; that since the taxpayer, Darley T. Randall performed no work in this State during the period from March, 1960 to May, 1960 when he and his family were visiting his parents, that the period should not count as days spent within the State of New York.

I am of the opinion that the taxpayers were domiciliaries of the State of New York from June, 1958 until May, 1962 when they changed their domicile to the State of New Jersey; that although they did not maintain a permanent place of abode within this State during the year 1960, they spent more than thirty days therein and were therefore deemed to have been residents of this State, for income tax purposes, within the intent and meaning of Section 605, Article 22 of the Tax Law.

The instant case is to be distinguished from the case of Ryan v. Chapman, 273 App. Div. 99, where the taxpayers spent no time in New York, while the husband was in the Army.

For the reason stated above I recommend that a determination be issued in the form submitted therewith.

DEC 21 1966

SOLOMON SIES

Hearing Officer

/s/ MARTIN SCHAPIRO

Approved

/s/ SAUL HECKELMAN

Approved

SS:HM (Dec. 29, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of:

DARLEY T. & ZENE RANDALL

**FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEAR 1960.**

The above named taxpayers having filed an application for revision or refund of personal income taxes under Article 22 of the Tax Law for the year 1960 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 17th day of June, 1966 before Solomon Rice, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayers were represented by Louis L. Rhine, C.F.A. and the matter having been duly examined and considered

The State Tax Commission hereby finds:

(1) That prior to 1958, the taxpayer Darley T. Randall was a student at Yale University and resided with his parents at Syosset, N.Y. when not in attendance at the University; that said taxpayer graduated Yale University in June, 1958 and immediately enlisted in the U.S. Army for a period of 3 years with a further enlistment of one year; that he entered into the Armed Forces of the United States from the State of New York; that the taxpayer Darley T. Randall served in the Armed Forces of U.S. for period from June 1958 to May 1962; that in March 1959, the taxpayer Darley T. Randall was married to Zene Fyle who was a domiciliary of the State of New York at that time and prior thereto; that after said marriage the taxpayers rented a furnished home at Pacific Grove, Cal. and lived there continuously from March 1959 until March 1960; that the taxpayer's first child was born in California in February, 1960; that in March, 1960, the taxpayer Darley T. Randall received military orders to proceed to Camp Dix, N.J. to await further orders for overseas duty in Germany; that while awaiting sailing orders to Germany and while on furlough, the taxpayer Darley T. Randall

and his family lived at the residence of his parents in Syosset, N.Y. during the period from March 20, 1960 to May 12, 1960 at which time they sailed for Germany where they lived in a hotel and furnished apartments in Munich, Germany until the discharge from military service of the taxpayer Darley T. Randall in May 1962 when they removed to Teapack, N.J. where they have resided since.

(2) That the taxpayers Darley T. Randall and Lena Pyle Randall, his wife, filed a Resident New York State Combined Income Tax Return for 1960 and paid the tax thereon in the sum of \$461.91; that on November 19, 1962, the taxpayers filed an application for refund of the taxes paid together with an amended joint New York State non-resident income tax return for the year 1960 contending they were non-residents of this State during said year.

(3) That the taxpayers were and remained domiciliaries of the State of New York during the period from 1958 to May 1962; that the taxpayers did not maintain a permanent place of abode within this State during the year 1960; that the taxpayers spent in the aggregate more than thirty days of the taxable year 1960 in this State.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DETERMINES:

(A) That since the taxpayers were domiciliaries of the State of New York during the year 1960 and spent in the aggregate more than thirty days therein, they are deemed to be residents of this State, for income tax purposes, within the intent and meaning of Section 605(a)(1), Article 22 of the Tax Law.

(3) That, accordingly, no recomputation, revision or re-settlement of the taxes can be made and that the application for revision or refund with respect to the year 1960 be and the same is hereby denied.

Dated: Albany, New York the 4th day of January 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

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