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BUREAU OF LAW

MEMORANDUM

TO: State Tax Commission

FROM: Ira J. Palestin

SUBJECT: George A. Aranov
Formal hearing on Petition for Redetermination
or Refund of Personal Tax for year 1962

A formal hearing was held February 16, 1968 at 80 Centre Street, New York, N. Y. before Ira J. Palestin, Hearing Officer, on this taxpayer's petition for redetermination or refund of a deficiency in the sum of $182.29 with interest for tax year 1962. Taxpayer appeared at the hearing and was its only witness. His petition was addressed to a notice of deficiency issued by Income Tax Bureau, which disallowed expenses taxpayer claimed to have incurred while he was away from home. A statement of audit changes annexed to the notice of deficiency recited that a total income adjustment of $3,129.45 was made to conform with a similar adjustment on Federal audit of taxpayer's 1962 personal income tax return. In his petition, taxpayer alleged he assumed the position of business manager in Providence, Rhode Island of Local 18, International Jewelry Workers Union, AFL-CIO and that: "The moment I was appointed business manager in January, 1961, I made Providence . . . my residence, domicile and home and have full intention . . . of so retaining it as my home."

Taxpayer and his wife filed resident IT-208 returns for calendar year 1962, taxpayer deducting from his total income the sum of $5,376 "non-resident" subtractions in equal amount, $5,376.

The testimony shows taxpayer, a married man with two children, lived "quite a number of years" in Brooklyn on New York Avenue and on Nostrand Avenue (s.m. 6) (numerical references hereinafter are to page numbers of stenographer's minutes); that his wife and children resided at 2525 Nostrand Avenue in Brooklyn in 1962, the tax year involved; taxpayer still lives there; in 1962 his son went to grammar school at Nostrand Avenue, Brooklyn, and his daughter was a pupil at Erasmus High School, (4,5); his children lived with their mother; taxpayer was not separated from his wife (5,22).

In 1962 taxpayer was manager of a trade union in Providence, Rhode Island (7,8). While he worked in Providence, he lived successively at two places, the Crown Hotel on Weybosset Street and 247 Wayland Avenue, in Providence (12). The room he occupied at the Crown Hotel was furnished by the hotel; at his subsequent Wayland Avenue address taxpayer occupied

a two and a half room apartment furnished by his landlord (13).

Taxpayer had a lease of his apartment at Brooklyn premises, 2525 Nostrand Avenue, in which he and his wife were the named tenants (9,10). His Nostrand Avenue Brooklyn lease began November, 1961 or November, 1962; he and his wife had a lease on the four-room apartment they occupied at 1418 New York Avenue, Brooklyn before they moved into 2525 Nostrand Avenue, Brooklyn; the Nostrand Avenue premises also were a four-room apartment, and both Brooklyn apartments contained taxpayer's own furniture. He still lives in that apartment at 2525 Nostrand Avenue, Brooklyn (8-10).

Taxpayer would return to his apartment at 2525 Nostrand Avenue, Brooklyn, at the conclusion of his work week in Providence for Saturdays and Sundays "each week during the year 1962" or "the majority, I would say, of times I came back Saturday and Sunday. My business sometimes made it necessary for me to stay over." (7). See also (5). Taxpayer was listed at his 1962 residence in the Brooklyn Telephone Directory for that year, paying Telephone Company bills rendered to him in Brooklyn (23). He also paid the rent for his Brooklyn apartment (23). When his son became 13 he was confirmed, not in a formal sense: "We had a party for him on his 13th birthday" at 2525 Nostrand Avenue, Brooklyn given by his parents. "I was there in the capacity of the father." (15). Although this confirmation party was given in 1963, when the boy became 13, taxpayer was still Manager of the Union in Providence where he lived in the year 1963 at that time, having held that position from 1961 to 1966 (12,14).

He and his wife never maintained a residence other than their Brooklyn apartment during 1962 or thereafter (27). His 1962 Federal income tax return listed his Brooklyn residence. It was filed in Providence. Travel, lodgings, and other maintenance expenses which he took as Federal deductions relating to his Rhode Island employment were disallowed (17-19) on the ground that Providence "was my base home or home base or something. They used some expression saying that I belong in Rhode Island . . . where my job and lodgings and expenses are and that is where they were." (20,21). Taxpayer did not carry a protest at this disallowance beyond and higher than the Office of the District Director of the IRS. He protested the additional proposed assessment with the "Federal tax people in Schermerhorn Street, Brooklyn." (25,26). He paid the Federal assessment. (25).

It is clear that despite his employment as Manager of a trade union local in Providence, Rhode Island taxpayer maintained a permanent place of abode in Brooklyn, New York during the applicable year and continued a New York resident. See

Section 603, Tax Law and Article 501(a) Income Tax Regulations. See also determinations by the State Tax Commission in Matter of Frazier dated June 28, 1966, Matter of Gornick dated January 31, 1967 and Matter of Leven dated March 18, 1968. See also IRS rules on travel and transportation expense reported in Volume 1 Commerce Clearing House Standard Federal Tax Reporter ¶1350.1433, which state in part:

> "'Home'" Defined
>
> The term 'home,' to the individual, ordinarily means the place where he and his family live. The term has a different meaning, however, for the purpose of deducting traveling expenses. Your 'home,' for this purpose, is your place of business, employment, station, or post of duty, regardless of where you maintain your family residence. Thus, there may be instances in which you are 'traveling away from home' even while working in the same city in which you and your family live."

This memorandum accompanies a proposed determination in form denying taxpayer's application for redetermination and refund.

Dated: April 3, 1968

Ira J. Palestin

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5-1-68

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

GEORGE A. ARANOV

FOR A REDETERMINATION OF DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX
LAW FOR THE YEAR 1962.

- -x

The taxpayer, George A. Aranov, having duly filed a petition for redetermination or refund of a deficiency of personal income taxes for the year 1962 (File No. 2-8341990), and a formal hearing having been held at the office of the State Tax Commission, State Office Building, 80 Centre Street, New York, N. Y. on February 16, 1967 before Ira J. Palestin, Hearing Officer, and George A. Aranov having appeared and testified at the said hearing and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Taxpayer, George A. Aranov, filed an IT-208 resident New York State combined income tax return with his wife for the year 1962. On this return, taxpayer reported his total income at $5,376.00. On line 7 of this return he listed: "Other subtractions Non-Resident" in the sum of $5,376, and at line 20 he reported zero tax.

(2) On May 10, 1965 a notice of deficiency was issued to taxpayer by Income Tax Bureau which disallowed expenses taxpayer had stated were incurred while away from home; a statement of audit changes annexed thereto recited "Adjustment is made to conform with the Federal audit of your 1962

return." Total taxable income adjustment in the statement of audit changes was in the sum of $3,129.45 and the notice of deficiency listed a tax deficiency of $182.29, with interest at $22.60, for a total of $204.91.

(3) During calendar year 1962 taxpayer was employed as Business Manager of Local 18, International Jewelry Workers Union, AFL-CIO in Providence, R.I., where he lived in a furnished hotel room and in a furnished two and a half room apartment (s.m. 7, 8, 11-13. See also taxpayer's petition herein). He also maintained in 1962 a residence in Brooklyn, New York, where he had lived for several years past. In all or part of 1962 his residence was at 2525 Nostrand Avenue, Brooklyn, New York, where he has since lived and still lives. Prior to his occupancy of his present apartment in Brooklyn, New York, taxpayer had lived at 1418 New York Avenue, Brooklyn, New York from which he had moved to his Nostrand Avenue apartment in Brooklyn. He was lessee with his wife of his apartment at 1418 New York Avenue, Brooklyn, New York and of his apartment at 2525 Nostrend Avenue, Brooklyn, New York; taxpayer paid the rent at these Brooklyn apartments. Both of them were furnished with taxpayer's own furniture (s.m. 6, 8, 9, 10).

(4) During the year 1962 taxpayer's family, including his two children resided at their Brooklyn apartment (s.m. 6). His son went to grammar school at Nostrand Avenue, Brooklyn and his daughter attended Erasmus High School in Brooklyn (s.m. 4,5). The telephone listing for his Brooklyn apartment in 1962 was in taxpayer's own name in the Brooklyn Directory of the New York Telephone Company, taxpayer paying the telephone bills there (s.m. 23).

(5) At the conclusion of his work week in Providence, Rhode Island, taxpayer returned to his apartment, 2525 Nostrand

Avenue, Brooklyn for Saturdays and Sundays "each week during the year 1962" or "the majority, I would say, of times I came back Saturday and Sunday. My business sometimes made it necessary for me to stay over" (s.m. 7,5).

(6) During 1962 or thereafter, taxpayer and his wife never maintained a residence other than their Brooklyn apartment (s.m. 27).

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

DECIDES:

(A) By virtue of the facts recited in paragraphs (3) - (6) above, taxpayer was domiciled and maintained a permanent place of abode in New York State during 1962; he was consequently a resident of the State of New York as defined in section 605 of Article 22 of the Tax Law during 1962.

(B) Taxpayer maintained a place of abode in Providence, Rhode Island, the seat of his own business location; such location was the taxpayer's home within the intent and meaning of the provisions of section 162(a)(2) of the 1954 Internal Revenue Code which allows as a deduction traveling expenses, including the entire amount expended for meals and lodging, paid or incurred in carrying on any trade or business while away from home; such expenses were not incurred away from home, and were properly disallowed. See 1943 C.B. 66. See also publication of Internal Revenue Service outlining its policy on various phases of travel expense deductions reported at paragraph 1350.1433, Commerce Clearing House Standard Federal Tax Reporter. This states, in part, as follows:

> "the term 'home' to the individual ordinarily means the place where he [taxpayer] and his family live. The term has a different meaning, however, for the purpose of deducting

traveling expenses; Your 'home,' for this purpose, is your place of business, employment, station, or post of duty, regardless of where you maintain your family residence. Thus, there may be instances in which you are 'traveling away from home' even while working in the same city in which you and your family live."

(C) The statement of audit changes and notice of deficiency for payment as New York resident income tax for the year 1962 correctly states taxpayer's income tax liability for that year; the same was lawfully due and owing; taxpayer's petition for redetermination of deficiency or for refund of personal income tax in such amount is hereby denied.

Dated: Albany, New York, this 28th day of May , 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ A. BRUCE MANLEY
Commissioner

/s/ SAMUEL E. LEPLER
Commissioner

L 9 (2-67)

BUREAU OF LAW
MEMORANDUM

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Dated: April 3, 1968

Ira J. Palestin

STATE OF NEW YORK

STATE TAX COMMISSION

- -x

IN THE MATTER OF THE PETITION

OF

GEORGE A. ARANOV

FOR A REDETERMINATION OF DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962.

- -x

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(C) The statement of audit changes and notice of deficiency for payment as New York resident income tax for the year 1962 correctly states taxpayer's income tax liability for that year; the same was lawfully due and owing; taxpayer's petition for redetermination of deficiency or for refund of personal income tax in such amount is hereby denied.

Dated: Albany, New York, this 11th day of June, 1968.

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER