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MEMORANDUM

Income Tax Determination
1966 A-2
Noteman, Yutieve C.

TO: State Tax Commission

FROM: Evelyn King, Hearing Officer

SUBJECT: YUTIEVE C. NOTEMAN

Petition for a Redetermination of a Deficiency
or for a Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Year 1963

A hearing on the above matter was held before me at
80 Centre Street, New York, New York, on November 2, 1967, at which
hearing taxpayer appeared in person and testified.

The issue involved is whether the taxpayer was a
resident of the State of New York for income tax purposes during
the year 1963 in accordance with section 605(a)1 of the Tax Law.
Determinative of the issue is whether or not the taxpayer effected
a change of domicile during the year in issue.

The taxpayer filed a New York State resident income tax
return for the period January 1, 1963 to March 29, 1963. Taxpayer
claims that she changed her domicile from the State of New York to
Madrid, Spain, when taxpayer left New York State and moved to
Madrid on March 29, 1963.

The marital status of taxpayer during the tax year in
question was "divorced". Taxpayer testified that her income from
all sources in 1963 consisted of "income from a trust fund in the
amount of \$500 a month and alimony in the amount of \$650 a month,
making a total of \$1,150 a month." Taxpayer's New York State
resident income tax return for the period 1/1/63 to 1/29/63, State
Tax Commission Exhibit "A", indicates that the total income of the
taxpayer from trust dividends was almost \$1,000 per month in
addition to her alimony in the amount of \$650 per month.

Prior to April 29, 1963, when taxpayer left New York
for Madrid, Spain, taxpayer had lived all of her life as a resident
of the State of New York.

When taxpayer left the United States on April 29, 1963,
she owed back tax obligations to the State of New York and to the
United States Government. The brief of the taxpayer's then
attorneys, Becker, Ross & Stone, filed with the New York State
Income Tax Bureau November 24, 1964, stated that taxpayer owed the
United State Government back taxes for the years 1960, 1961 and 1962.

in the total amount of \$7,098.20 and that she owed the State of New York back taxes for the years 1961 and 1962 in the amount of \$1,141.76 and that, in addition thereto, an estimated income tax payment of \$1,150 was to become due April 15, 1963.

Taxpayer testified at the hearing that she left New York "to avoid heavy and excessive taxation, to go to Spain which would presumably allow me to live reasonably while I paid off these taxes without living in abject poverty to do it". Taxpayer further testified at the hearing that she did not have the intention of returning to New York when her financial affairs were put in order, that she preferred to remain out of the country. (Emphasis supplied)

Taxpayer arrived in Madrid on April 29, 1963 with one large bag of clothing. Taxpayer put her furniture in storage at the Manhattan Morgan Storage Company. Taxpayer stayed at the Hotel Fenix in Madrid. Taxpayer testified at the hearing that while living in Madrid she had the intention to make Madrid her permanent home and to live abroad permanently. Taxpayer had no relatives living in or near Madrid. Taxpayer had many close friends but did not contact any of them nor did taxpayer frequently entertain nor was she frequently entertained while living at the Hotel Fenix. Taxpayer stayed in Madrid slightly less than two months. In June of 1963, taxpayer left Madrid for Rome, Italy, where she stayed for two days on business. Taxpayer then proceeded to Switzerland.

Taxpayer remained in Switzerland for approximately nine months from June, 1963 until February, 1964. Taxpayer stayed first at the Hotel Richmond in Geneva for four days then went to the Hotel President. Taxpayer remained at Hotel President until October, 1963, when she left owing them approximately \$1,250. Taxpayer then moved into the Hotel De L'Ancre where she remained until February, 1964, which taxpayer described as "impossible" but substantially less expensive than the Hotel President.

In February, 1964, taxpayer flew to New York City for the stated sole reason of clearing up her tax matters. Taxpayer stayed in New York four or five days. On February 10, 1964, taxpayer flew back to Madrid where she remained for a period of slightly less than three months until May 2, 1964. While in Madrid, she stayed at the Pension Barralde for approximately five days. Taxpayer then moved to the Hotel Grand Velasquez until the end of April, 1964.

On May 2, 1964, taxpayer returned to New York City, leaving on May 5, 1964 for Atlantic City, New Jersey where she remained for three months. On August 5, 1964, taxpayer returned to New York City

and went to live first at the Bruckman Tower Hotel and then at the Dover Hotel. She remained at the Dover Hotel for approximately nine months, occupying a 2 1/2 room furnished apartment at a monthly rental of \$350, until May 18, 1963 when she went to Barcelona, Spain.

During the period March 29, 1963 to May, 1964, when taxpayer was outside the United States, her financial affairs were at all times managed from New York by her accountants, more particularly, Mr. David Weinless of the firm of Katz, Buckerman & Co. During this same period while taxpayer was outside the United States, taxpayer's United States and New York State back income taxes were paid in full. During the period taxpayer was outside the United States, April 29, 1963 to May 2, 1964, taxpayer maintained a commercial banking account in New York. During this same period, April 29, 1963 and May 2, 1964, taxpayer maintained her New York driver's license. When taxpayer let it lapse, taxpayer did so because her accountant had forwarded to her a renewal card for a chauffeur's license.

I am of the opinion that the taxpayer in the tax year in question had no fixed and definite intention to abandon her old domicile in the State of New York. I am further of the opinion that the taxpayer failed to effect the acquisition of a new domicile; that the taxpayer in the tax year in question was in itinere and had no fixed and certain purpose to establish a permanent home in any particular place outside the United States which would constitute a new domicile; that consequently no change of domicile was actually effected.

Article 502 of Personal Income Tax Regulations pertaining to Article 16 provides, in part, that:

"The domicile is not changed by removal for a definite period or for particular purposes nor by abandonment of the old domicile until the acquisition of a new one is effected. To constitute a change, there must be intent to change, actual removal, and a new abode."

Although these regulations pertain to Article 16, the statements therein are also applicable to Article 22 (N.Y.C. R.R. 20, Section 259.2).

The statements of intention made by the taxpayer at the hearing are contradicted by her conduct and the circumstances surrounding her trip to Madrid, which, in my opinion, indicate an intention merely to remain out of the country for transitory and particular purposes rather than to abandon her old domicile and establish a permanent home outside the United States which would constitute a new domicile. Andrew v. Graves, (1942) 263 App. Div. 158; aff'd 288 N.Y. 660.

Since the taxpayer continued to remain a domiciliary of the State of New York and spent more than thirty days within the State, she should be deemed to have been a resident for income tax purposes for the entire year 1963 in accordance with the intent and meaning of section 605 (a)(1) of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

Frederic Kwei
Hearing Officer

March 25th, 1968
EK:dob

4-8-68

STATE OF NEW YORK
STATE TAX COMMISSION

.....
IN THE MATTER OF THE PETITION :
OF :
TUTTLE C. NOTENMAN :
FOR A DETERMINATION OF A DEFICIENCY :
OR FOR A REFUND OF PERSONAL INCOME :
TAXES UNDER ARTICLE 22 OF THE TAX LAW :
FOR THE YEAR 1963. :
.....

Tuttle C. Noteman having filed a petition for a redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the year 1963, and a hearing having been held at the office of the State Tax Commission, 50 Centre Street, New York, N. Y., on November 2, 1967 before Evelyn King, Hearing Officer of the Department of Taxation and Finance, at which hearing taxpayer appeared in person and testified, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That taxpayer filed a New York State Resident Income Tax return for the period January 1, 1963 to March 29, 1963 reporting total income for the first three months from all-
money and trust dividends of \$4,920.00, which represented one-quarter of the total income received by her from these sources for the calendar year 1963; that it is claimed that taxpayer left the State of New York on March 29, 1963 and established her domicile in Madrid, Spain.

(2) That on August 12, 1964 the Department of Taxation and Finance issued a Statement of Audit Charges against the

taxpayer so as to include the entire income of the taxpayer for the year 1963 in the sum of \$19,680 and imposed additional personal income taxes in the sum of \$889.48 and, accordingly, issued a Notice of Deficiency in the sum of \$913.01, including interest.

(3) That taxpayer had lived all of her life as a resident of the State of New York until April 29, 1963 when she testified she left New York for Madrid, Spain.

(4) That taxpayer arrived in Madrid, Spain, on April 29, 1963 with one large bag of clothing and went to live at the Hotel Penix in Madrid; that taxpayer's furniture was placed by her in storage in the Manhattan Morgan Storage Company; that taxpayer had no relatives living in or near Madrid; that taxpayer had many close friends living in or near Madrid but did not contact any of them; that taxpayer remained in Madrid for slightly less than two months; that taxpayer in June of 1963 left Madrid for Rome, Italy, where she remained for two days on business; that taxpayer then proceeded to Switzerland where she remained for approximately nine months from June of 1963 until February, 1964, staying at three different hotels in Geneva; that in February, 1964, taxpayer flew back to New York City for the stated sole reason of clearing up her tax matters; that taxpayer stayed in New York four or five days; that on February 10, 1964 taxpayer returned to Madrid where she remained for a period of slightly less than three months until May 8, 1964, living in several hotels during this period; that on May 2, 1964 taxpayer returned to New York City; that taxpayer left New York City on May 5, 1964 for Atlantic City, N. J. where she remained for three months; that on August 3, 1964, taxpayer returned to New York City where she stayed for approximately nine months until May 15, 1965, occupying

a 2 1/2-room furnished apartment at a monthly rental of \$150; that on May 12, 1963 taxpayer left New York and went to Barcelona, Spain.

(5) That when taxpayer left the United States on April 29, 1963, she owed back tax obligations to the State of New York and to the United States Government; that during the period April 29, 1963 to May 2, 1964, when taxpayer was outside the United States, her financial affairs were at all times managed from New York by her accountants; that during this same period taxpayer's United States and New York State back income taxes were paid in full; that during this same period taxpayer maintained a commercial banking account in New York and maintained her New York driver's license, letting it lapse because her accountant had forwarded to her a renewal card for a chauffeur's license.

(6) That while taxpayer testified that she intended to make Madrid, Spain, her permanent home in 1963 and to live abroad permanently, she remained in Madrid for less than two months in 1963 and travelled to other countries in Europe; that the conduct of the taxpayer and the circumstances surrounding her trip to Madrid, Spain, evince an intention to remain outside of the United States for transitory purposes rather than to establish a fixed and permanent home in any particular place.

(7) That taxpayer had no fixed and definite intention to abandon her New York domicile in 1963, and never actually established a new domicile outside the United States in 1963; that taxpayer in 1963 accordingly never actually effected a change of domicile.

(8) That during the year 1963 the taxpayer remained a domiciliary of the State of New York and spent more than thirty days therein.

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

The State Tax Commission hereby

DECIDES:

(A) That the taxpayer was a resident of the State of New York during the entire taxable year 1963, for income tax purposes, within the intent and meaning of Section 605(a)(1) of the Tax Law.

(B) That, accordingly, the Notice of Deficiency for the year 1963 was properly issued and that the tax and interest stated therein are correct and are due and owing, together with any other lawful interest and statutory charges; that the taxpayer's petition for a redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the year 1963 be and the same hereby is denied.

DATED: Albany, New York on this 30th day of April, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~PRESIDENT~~

/s/

A. BRUCE MANLEY

~~COMMISSIONER~~

/s/

SAMUEL E. LEPLER

~~COMMISSIONER~~