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MEMORANDUM

*Income Tax Determinations**A-2**Post, Clemens*

68

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of
GLENNIS POST For Redetermination
of a Deficiency or For Refund of
Personal Income Taxes Under Article
22 of the Tax Law For the Year 1964

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on January 25, 1968. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the taxpayer was a resident of New York as defined by section 605(a) of the Tax Law. The taxpayer filed a New York State income tax resident return for 1964 in which he reported, "I had no New York State income either before or after I moved to New York. I worked in Pennsburgh, Pennsylvania." The taxpayer also reported on his tax return that he resided in New York from October 1, 1964 to December 31, 1964.

On March 13, 1967, a notice of deficiency and a statement of audit changes were issued for the year 1964 (File No. 69987803) which determined personal income tax and interest due in the sum of \$1,900.79. The tax deficiency was issued on the basis that the taxpayer was a resident of New York State and accordingly, his total income reported on his Federal return was taxable. In addition, rental income and expenses, moving expenses, employee business expenses and itemized deductions which the taxpayer claimed on his Federal return were disallowed as unsubstantiated.

The taxpayer was a life-long resident of New York before being transferred by his employer, Highway Trailer Company of Chicago, to its home office in Chicago, Illinois during the middle of 1963. Prior to the transfer, the taxpayer resided with his wife and two children in Westbury, Long Island in a house which he owned. The taxpayer was employed in New Jersey as an Assistant Vice President of the Highway Trailer Company. Upon being transferred to Chicago, taxpayer rented his furnished house and leased a furnished house in Winnetka, Illinois for a three-month period. On the expiration of the lease of the house in Winnetka, the taxpayer rented an unfurnished house for 10 months which he furnished with inexpensive furniture. In March of 1964, prior to the expiration of the 10 month lease, the

taxpayer obtained a position with Berman Leasing Company in Pennsburgh, Pennsylvania approximately 150 miles from the taxpayer's home in Westbury, Long Island. The taxpayer's family did not move to Pennsburgh but returned to New York. The taxpayer's furniture located in Illinois was sold with the exception of a washer and dryer. After obtaining the position with the Berman Leasing Company, the taxpayer lived in motels and hotels until 1966. The rent of the taxpayer's room was paid for by his employer. The taxpayer visited his wife and family during 1964 on an average of three weekends a month for 10 months. During 1964, the taxpayer maintained a safe deposit box in New York in which he kept his personal papers. He also retained his New York driver's license until 1967. The automobile owned by the taxpayer was registered in New York State during the year 1964.

At the hearing, the taxpayer refused to submit any evidence to substantiate his rental income and expenses, moving expenses, employee business expenses and his itemized deductions.

It is my opinion that the taxpayer was taxable as a New York resident for the year 1964 within the intent and meaning of section 605(a) of the Tax Law. The taxpayer did not show that he changed his domicile when he moved to Chicago in 1963 or to Pennsylvania in 1964. I find that he retained his domicile in New York State, and maintained a permanent place of abode in New York State and did not maintain one outside the State during the entire year. In addition, the taxpayer spent more than 30 days in the State.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter denying the taxpayer's petition be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:ac
Enc.

March 7, 1968

3-14-68

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION
OF
CLEGGINS POST
**FOR A REDETERMINATION OF A DEFICI-
ENCY OR FOR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 22 OF
THE TAX LAW FOR THE YEAR 1964**

The taxpayer herein having filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 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 January 23, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State income tax resident return for 1964 in which he reported: "I had no New York State income either before or after I moved to New York. I worked in Pottsville, Pennsylvania."; that the taxpayer reported on his tax return that he was a resident of New York from October 1, 1964 to December 31, 1964.

(2) That on March 13, 1967, a notice of deficiency and a statement of audit changes were issued for the year 1964 (File No. 69987803) determining personal income tax and interest due in the sum of \$1,900.79 on the basis that the taxpayer was a resident of New York State and that his total income reported on his Federal return was taxable and that rental income and expenses, moving expenses, employee business expenses and itemized deductions claimed on his Federal return were disallowed as unsubstantiated.

(3) That the taxpayer was a life-long resident of New York State before being transferred by his employer to Chicago, Illinois during the middle of 1963; that prior to his transfer, the taxpayer resided with his wife and two children in Westbury, Long Island in a house which he owned; that he was employed during 1963 by Highway Trailer Company of Chicago as an Assistant Vice President; that prior to his transfer to Chicago, he was employed by the company at its office in New Jersey.

(4) That upon being transferred by his employer to Chicago, Illinois in 1963, the taxpayer rented out his furnished house in Westbury, Long Island, and leased a furnished house in Winnetka, Illinois for a three month period; that on the expiration of the Winnetka lease, the taxpayer rented an unfurnished house for 10 months which he furnished with inexpensive furniture; that in March of 1964, prior to the expiration of the 10 month lease, the taxpayer obtained a position with Berman Leasing Company in Pennsburg, Pennsylvania, approximately 150 miles from the taxpayer's home in Westbury, Long Island; that the taxpayer's family did not move to Pennsburg, Pennsylvania with the taxpayer but returned to Long Island and continued to reside in Long Island until sometime in 1966; that after obtaining a position with Berman Leasing Company, the taxpayer lived in motels and hotels, the cost of which was paid for by his employer; that after moving to Pennsburg, Pennsylvania, the taxpayer lived with his wife and family in Long Island on an average of three weekends a month for 10 months during 1964.

(5) That the taxpayer rented a safe deposit box in New York State during 1964 in which he kept his personal papers; that he did not rent a safe deposit box elsewhere; that the taxpayer retained his New York driver's license until 1967; that the taxpayer did not obtain a driver's license in any other state until 1967; that the automobile owned by the taxpayer was registered in New York State during 1964;

that the taxpayer did not vote in any election during 1963 or 1964.

(6) That the taxpayer did not change his domicile when he moved to Chicago in 1963 or to Pennsylvania in 1964; that the taxpayer was domiciled in New York State and spent more than 30 days and maintained a permanent place of abode in New York State throughout 1964; that the taxpayer did not maintain a permanent place of abode outside of New York during the entire year of 1964.

(7) That the taxpayer refused to submit any evidence to substantiate his rental income and expenses, moving expenses, employee's business expenses and itemized deductions for the year 1964.

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 New York for tax purposes during the year 1964 since he was domiciled in New York throughout the year, maintained a permanent place of abode in this State and spent more than 30 days in this State and did not maintain a permanent place of abode without the State during the entire year; that accordingly, the taxpayer's taxable income from all sources was subject to New York income tax.

(B) That the taxpayer failed to substantiate his rental income and expenses, moving and employee's business expenses and his itemized deductions since he refused to submit any evidence due with respect to them.

(C) That accordingly, the notice of deficiency and statement of audit changes (File No. 69987803) for the year 1964 are correct and do not include any tax or other charges which are not lawfully due and owing and that taxpayer's petition for redetermination of the

deficiency for the year 1964 be and the same is hereby denied.

DATED: Albany, New York on this 25th day of March, 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

/s/ SAMUEL E. LEPLER
COMMISSIONER