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## BUREAU OF LAW

MEMORANDUM

*Income Tax Determinations*  
*A-Z*  
*Gidynski, Joseph C.*

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: JOSEPH C. GIDYNSKI

Application for Revision or Refund  
of Personal Income Taxes under  
Article 16 for the Years 1955, 1956,  
1957 and 1959 and Article 22 for the  
Year 1960

A hearing was held in the above matter at the New York City office on December 10, 1965.

The issue involved herein is whether the taxpayer was a resident, for income tax purposes, during the years in issue in accordance with the provisions of section 350(7), Article 16 and section 605, Article 22 of the Tax Law.

The taxpayer, Joseph C. Gidynski, his wife and two children were born in Poland. He and his wife were professionals; she a physician and he a lawyer. The taxpayer also served in the Polish Army in World War II. When the Germans overran Poland in 1939, the taxpayer was forced to flee to Rumania. The taxpayer entered the United States in October, 1939 but his wife and children remained in Poland. At that time, he lived in small, furnished rooms in New York City. He studied at Columbia Law School and received his LL.B. in 1945. He was admitted to the Bar of the State of New York in the latter part of 1946. Thereafter, he accepted a position with the Voice of America at its headquarters in New York City. He brought his family to the United States in July, 1946. When his family arrived in this country, he leased an apartment at 760 Riverside Drive in New York City which he furnished. His wife studied for her examinations to qualify as a physician in this State and she received her license to practice medicine in 1951.

On October 1, 1954, the New York City office of the Voice of America was transferred to Washington, D. C. The taxpayer, who was at that time Chief, Polish Service, Voice of America, U. S. Information Service, decided to continue his employment with that agency in Washington, D. C. He leased an unfurnished apartment for one year at 1500 Massachusetts Avenue N. W., Washington, D. C. which he subsequently renewed until 1963 when he removed to another unfurnished apartment in Washington, D. C. The apartment consisted of a living room, dressing room, kitchen and bathroom. The taxpayer moved some of his personal belongings, including his library and certain furniture, to the apartment in Washington, D. C. His daughter (20) and son (16), remained in

the New York City apartment with the wife. The wife maintained part of the apartment at 780 Riverside Drive for the practice of medicine and also maintained an office in partnership with two other physicians in Brooklyn. In addition, she received a salary from the New York City Department of Health. She deducted on her New York State income tax return for 1960, as an expense, one-third of the rental of the Riverside Drive apartment. The taxpayer registered to vote in New York City from Riverside Drive, New York City for the years 1955, 1956, 1959 and 1960. He filed an application for permanent registration with the Board of Elections in New York County in 1959 and submitted an affidavit in which he stated that he acquired no other residence than at 780 Riverside Drive, New York City which he claimed as his legal residence for the past 12 years. The taxpayer's permanent registration to vote was cancelled by the Board of Elections for New York City effective for the year 1961. He voted from the District of Columbia in 1964.

The taxpayer's wife filed a New York State combined income tax return (Form IT-208) for the year 1960 which was signed by both the taxpayer and his wife. The wife reported Federal adjusted gross income in the amount of \$5,239.00. She claimed a single exemption of \$600.00. The taxpayer reported on said return Federal adjusted gross income of \$14,359.00, and New York taxable income of \$12,519.00. He did not compute New York State income tax for said year. The return stated that the "husband pays tax in Washington, D. C. where he resides as a Federal employee". An assessment was issued against taxpayer on March 7, 1962 for the year 1960 imposing personal income tax in the amount of \$199.80 on the ground that he was a resident for income tax purposes. The Income Tax Bureau wrote the taxpayer on March 7, 1962 advising him that, based upon the information submitted, he continued to remain a domiciliary of the State of New York and to maintain a permanent place of abode therein and spent more than 30 days in New York during each of the years 1955, 1956, 1957 and 1959, and he was therefore required to file returns for said years. The taxpayer failed to comply with said request and, accordingly, a penalty assessment in the amount of \$1,000.00 was issued on October 14, 1964 (Assessment No. AB 56700 for the years 1955, 1956, 1957 and 1959) for failure to file returns and pay the tax due for the abovementioned years.

The taxpayer contends that he abandoned his New York domicile on October 1, 1954 when he continued his employment with the Voice of America in Washington, D. C.; that he maintained a permanent place of abode in the District of Columbia and did not maintain a permanent place of abode in New York; that during the years in issue, he was a domiciliary of the

District of Columbia and his wife was a domiciliary of the State of New York; that he spent less than 30 days within the State during each of the years in issue; that the penalty assessment was improperly issued and that the Department of Taxation and Finance was guilty of laches in failing to make an assessment (penalty for 1955, 1956, 1957 and 1959) prior to October 14, 1964.

The taxpayer has made conflicting, contradictory and inconsistent statements with respect to this domicile, maintenance of a permanent place of abode and the time spent within the State of New York during the years in issue. (See Form IT-460, Tax Commission, Exhibit C) Although the taxpayer maintained a place of abode in Washington, D. C. which may have been either of a temporary or indefinite duration, he nevertheless maintained a permanent place of abode within the State of New York. He renewed the lease of the apartment in New York City and he voted from New York City. He stated that he visited his family on weekends once or twice a month but kept no record of the actual days spent within the State of New York during the years involved herein. He also came into New York City on official business of the Voice of America and on such occasions, he slept overnight at the New York City apartment. At the hearing, he claimed that he only spent one day on a weekend once a month. The record indicates that the taxpayer visited his family on weekends and spent between 24 and 48 days at the New York City apartment on such visits during each of the years in issue. In addition, he also came into New York City on official visits in connection with his employment between 10 and 12 days during each of the years in issue, so that the taxpayer spent at least more than 30 days within the State of New York during each of the years 1955, 1956, 1957, 1959 and 1960.

The taxpayer did not acquire a domicile in the District of Columbia merely by going there to live for an indefinite period of time while in government service. (See District of Columbia v. Murphy, District of Columbia v. Bell, 314 U.S. 441.)

Subdivision (7) of section 350, Article 16 of the Tax Law defines a resident as a person who is domiciled in this State and excepts from said definition a person who, though domiciled in this State, maintains a permanent place of abode without the State, maintains no permanent place of abode within the State and spends no more than 30 days within the State. Similar provisions are contained in section 605(a)(1), (2) and (b), Article 22 of the Tax Law. Reg. 20 NYCRR 102.2 defines a resident, for income tax purposes, domicile and a permanent place of abode under Article 22 of the Tax Law. Regs. 20 NYCRR 269.1, 269.2 and 269.3 define a resident, for income tax purposes, domicile and a permanent place of abode under Article 16 of the Tax Law. The aforementioned Regulations (under Articles 16 and 22) are similar.

Regs. 20 NYCRR 269.1(a)(1) and 102.2(b) provide that a domiciliary who maintains a permanent place of abode in New York State is a resident. Regs. 20 NYCRR 269.2(a) and 102.2(d) in effect, provide that to effect a change of domicile, there must be (a) intent to change, (b) actual removal and (c) acquisition of a new abode. Regs. 20 NYCRR 269.1(2)(b) and 102.2(c) provide that presence within the State for any part of a calendar day shall constitute a day spent within the State. Reg. 20 NYCRR 269.3 and 102.2(e) provide that a permanent place of abode need not be owned by the individual so long as it is a permanent dwelling place. Income Tax Bureau Article 16 Policy Manual, Article 501 recognizes dual residence so that an individual may be a New York resident even if considered a resident by another state; Article 503 provides that a domiciliary who maintains a permanent place of abode in the State is a resident, and need not be within the State, at all, and further provides that to "maintain" a permanent place of abode requires the taxpayer to occupy or "keep it effective". Whether the taxpayer contributes to the cost of maintenance is merely an evidentiary factor in determining the question of residence (Opinion of Deputy Commissioner and Counsel, dated July 24, 1941).

It is to be noted that if the taxpayer had filed returns on the basis of New York taxable income of \$7,000.00 for all of the above years, the total tax due would amount to about \$1,000.00. In view of the fact that taxpayer's New York taxable income was over \$12,000.00 for 1960, (most likely the same for prior years) it cannot be said that the penalty assessment was unreasonable.

I am therefore of the opinion that the taxpayer is deemed to have been a resident of the State of New York for income tax purposes during the years in issue within the intent and meaning of sections 350(7) and 605 of the Tax Law.

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

SOLOMON SIES

Hearing Officer

SS:ldd

Enc.

November 18, 1968

*Sent to Commission 1/15/69*

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

JOSEPH C. GIDYNSKI

FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEARS 1955, 1956, 1957 AND 1958 AND  
UNDER ARTICLE 22 OF THE TAX LAW FOR THE  
YEAR 1960  
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The taxpayer, Joseph C. Gidynski, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1955, 1956, 1957 and 1958 and under Article 22 of the Tax Law for the year 1960 and a hearing having been held at the office of the State Tax Commission at 88 Centre Street, New York, New York on the 10th day of December, 1968, before Solomon Sica, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared personally and was represented by Keating and Brodtkin, Esqs. by John M. Keating, Esq., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That prior to 1955, the taxpayer and his wife were domiciliaries and residents of the State of New York and filed New York income tax returns for years prior thereto (Tax Commission Exhibit J - Statement of taxpayer attached to application for revision, page 3).

(2) That the taxpayer did not file any New York State income tax returns for the years 1955, 1956, 1957 and 1958; that his wife filed separate individual resident New York State income tax returns for said years.

(3) That Joseph C. Gidynski and Janina Gidynski, his wife, filed a joint Federal income tax return for the year 1960 in which they stated their home address as 780 Riverside Drive, New York, New York and reported Federal adjusted gross income in the amount of \$19,598.00; that Janina Gidynski filed a New York State combined income tax return for 1960 (Form IT-208 - separate individual returns on one form) signed by Joseph C. Gidynski and Janina Gidynski on which they stated their address as 780 Riverside Drive, New York, New York; that the wife reported Federal adjusted gross income in the amount of \$8,738.00 and New York taxable income of \$4,339.00; that she claimed a single exemption of \$600.00; that she computed and paid tax due in the amount of \$9.29; that the taxpayer, Joseph C. Gidynski, reported on the aforesaid Form IT-208 Federal adjusted gross income of \$14,359.00 and New York taxable income of \$12,619.00; that said taxpayer did not compute or pay New York State income tax for said year; that the return stated that "husband pays tax in Washington, D. C. where he resides as a Federal employee".

(4) That the taxpayer, Joseph C. Gidynski, filed a District of Columbia income tax return for 1960 listing his home address as 1500 Massachusetts Avenue, N. W., Washington, D. C. in which he claimed \$1,000.00 exemption as married and filing separately; that he claimed on said return a dependency credit of \$500.00 for his son, John Andrew, on the ground that the latter lived in his home for 12 months during the year; that the taxpayer claims he filed District of Columbia income tax returns for 1955 through 1959.

(5) That on March 7, 1962, the Department of Taxation and Finance issued an assessment against the taxpayer for the year 1960 (Assessment No. AB 000875) on the basis that he was a New York resident, for income tax purposes, for said year, recomputed the tax

due, credited him with taxes paid to the District of Columbia and imposed additional personal income tax in the amount of \$188.80.

(6) That on March 7, 1962, a letter was mailed to the taxpayer (Tax Commission Exhibit F) advising him that based upon the information submitted, he continued to be and remain a domiciliary of the State of New York; that he maintained a permanent place of abode within the State and spent more than thirty days therein during each of the years in issue; that he was required to file New York State income tax returns for the years 1955, 1956, 1957 and 1958; that the taxpayer failed to file such returns as requested; that on October 14, 1964, the Department of Taxation and Finance issued a penalty assessment against the taxpayer in the amount of \$1,000.00 (Assessment No. AB 88700) for failure to file returns and pay any tax due for the years 1955, 1956, 1957 and 1958.

(7) That the taxpayer, Joseph C. Gidynski, his wife and two children were born in Poland; that the taxpayer and his wife were professionals in Poland, he a lawyer and she a physician; that the taxpayer served in the Polish army in World War II; that he was forced to flee from Poland in 1939; that he arrived in the United States in October, 1939; that he lived in furnished rooms in the Borough of Manhattan, City of New York; that he attended Columbia Law School, graduated in 1945 and was admitted to the Bar of the State of New York towards the end of 1946; that thereafter he was employed by the Voice of America in New York City; that upon the arrival of his family in the United States in 1948, the taxpayer leased a four room unfurnished apartment at 780 Riverside Drive, New York, New York which he furnished; that he, his wife and children lived in said apartment; that the taxpayer's wife received her license to practice medicine in the State of New York in 1951; that in October, 1954, the Voice of America, U. S. Information Service removed its New York City headquarters to



Washington, D. C.; that the taxpayer decided to continue his employment with said agency in Washington, D. C. as Chief of Polish Service, Voice of America; that on October 1, 1954, he leased an unfurnished apartment consisting of a living room, dressing room, kitchen and bathroom at 1500 Massachusetts Avenue, N. W., Washington, D. C. for a term of one year which he subsequently renewed from year to year until 1963 when he removed to another unfurnished apartment at 1120 16th Street, N. W., Washington, D. C.; that his wife continued to reside at 780 Riverside Drive, New York City during all the years in issue.

(8) That the taxpayer registered to vote in New York City from 780 Riverside Drive, New York City in the years 1955, 1956, 1959 and 1960; that the taxpayer filed an application for permanent registration with the Board of Elections, New York County, in 1959 and submitted an affidavit in which he stated that he had not acquired any residence other than at 780 Riverside Drive, New York, New York which he claimed as his legal residence for the past 12 years (Tax Commission Exhibit Q - Statement of temporary absence filed with Board of Elections, New York County; Min. Hrg., page 42); that the taxpayer's permanent registration to vote in New York City was cancelled by the Board of Elections, New York County, effective as of 1961 (taxpayer's Exhibit #12); that the taxpayer voted from the District of Columbia in 1964.

(9) That on the questionnaire as to residence filed by the taxpayer on January 3, 1962 (Tax Commission Exhibit C), he stated that he continued to maintain his place of abode in New York City while living in Washington, D. C.; that some of his belongings and furniture were still in the State of New York (see also Min. Hrg., page 51); that after October, 1954 the taxpayer executed a renewal of the lease of the family apartment in New York City; that the taxpayer's name was listed in the Manhattan telephone directory during the years 1955 to 1960 (Min. of Hrg., page 50); that the taxpayer kept no record of days spent in New York during the

years in issue (Min. of Hrg., page 83); that during the years in issue the taxpayer visited his family and lived at the New York City apartment on weekends once or twice a month (Min. of Hrg., page 82); that the taxpayer made official trips from Washington, D. C. to New York City in connection with his employment with the Voice of America during the years 1955 through 1960 (taxpayer's Exhibit #8 - Statement from Voice of America Dated January 4, 1966); that during each of the years in issue the taxpayer spent between 10 and 12 days in New York City on official business of the Voice of America (taxpayer's Exhibit #13 - Statement of U. S. Information Agency with respect to trips to New York during 1960); that accordingly during each of the years in issue the taxpayer spent more than 30 days within the State of New York.

(10) That the taxpayer did not acquire a domicile in the District of Columbia merely by going to the District to live while in government service; that the taxpayer intended to and did continue to be and remain a domiciliary of the State of New York and spent more than 30 days therein during each of the years 1955 through 1960.

(11) That during each of the years in issue the taxpayer, Joseph C. Gidynski, maintained a permanent place of abode at 788 Riverside Drive, New York, New York.

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

**DETERMINES:**

(A) That during each of the years in issue the taxpayer was a domiciliary of the State of New York and spent more than 30 days therein.

(B) That during each of the years in issue the taxpayer maintained a permanent place of abode in the State of New York,

(C) That the taxpayer did not effect a change of domicile on October 1, 1954 by going to the District of Columbia while in government service.

(D) That during the years 1955, 1956, 1957, 1958 and 1959, the taxpayer, Joseph C. Gidnyski, was a resident of the State of New York, for income tax purposes, within the intent and meaning of section 350(7), Article 16 of the Tax Law and section 505, Article 22 of the Tax Law.

(E) That the penalty assessment made against the taxpayer for failure to file returns and pay any tax due for the years 1955, 1956, 1957 and 1958 (Assessment No. AB 56700) was validly issued pursuant to subdivision (4), section 376, Article 16 of the Tax Law.

(F) That, accordingly, the assessments (Assessment Nos. AB 56700 for 1955, 1956, 1957 and 1958 and AB 600873 for 1959) are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's applications for revision or refund filed with respect hereto be and the same are hereby denied.

DATED: Albany, New York this 15th day of January 1960.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY  
PRESIDENT

/s/

A. BRUCE MANLEY  
COMMISSIONER

COMMISSIONER