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Income Tax

MEMORANDUM

*Determinations A-Z**Reed, Jos. V. & Mary B.*

TO: **The State Tax Commission**

FROM: **Solomon Sles, Hearing Officer**

SUBJECT: **JOSEPH V. REED, JR.**

APPLICATION FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1959

JOSEPH V. AND MARY B. REED, JR.

PETITION FOR REINTERPRETATION OF A REVISION OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEARS 1960, 1961 and 1962

A combined hearing was held in the above matters at the New York City office on June 16, 1964. The taxpayers did not appear but were represented by an attorney who testified at the hearing.

The issue involved herein is whether or not the taxpayers were residents of this State, for income tax purposes, during the years in issue.

On April 28, 1964 the taxpayer, Joseph V. Reed, Jr., filed petitions with the Board of Elections of the City of New York designating him as a candidate for nomination for member of the Assembly from the Eighth Assembly District, New York County, in the Republican Primary Election to be held on June 2, 1964. The afore-mentioned taxpayer's opponent for the nomination brought a proceeding in the Supreme Court, New York County to invalidate the taxpayer's designating petitions on the ground that the taxpayer would not have been a resident of the State of New York for five years on January 1, 1963, the date on which he would assume office as an assemblyman if nominated and elected in accordance with Article XII, Section 7, N.Y. State Constitution. After a hearing, an order was entered directing that the taxpayer's designating petitions be invalidated. An appeal was taken to the Appellate Division, First Department, which unanimously affirmed without opinion the decision of the Supreme Court, Special Term. Leave to appeal was denied by the Court of Appeals on May 27, 1964.

On May 12, 1964, the taxpayer, Joseph V. Reed, Jr., filed a New York State income tax resident return for the year 1959 and he and his wife similarly filed resident returns for 1960, 1961 and 1962 and remitted payment of said taxes computed to be due together with interest computed up to May 8, 1964. On November 4, 1964, the taxpayers filed Forms IT-113 (Claims for

refund) for the years 1959, 1960, 1961 and for part of 1962 (January 1st to June 30, 1962). The taxpayers are claiming refunds totalling \$20,670.35 and contend that the Supreme Court, New York County, in effect, has ruled that the taxpayer, Joseph V. Reed, Jr. was a non-resident of this State until June 30, 1962.

Prior to 1959 the taxpayer, Joseph V. Reed, Jr. was a domiciliary of Connecticut and maintained a permanent place of abode there but did not maintain a permanent place of abode in New York State. In the beginning of 1959 he was attending Yale University. Some time in January, 1959 he became ill. He withdrew from Yale and went to New Mexico and Florida to convalesce upon the advice of his physician and remained there until the end of May, 1959. He came to New York in June, 1959 to undergo an operation. He leased an apartment at 7 East 63rd Street, New York City, from June 16th to September 30, 1959 which he used to recuperate. In the middle of September, 1959 he returned to Yale University. He rented a house in Guilford, Connecticut for the period from September, 1959 to June, 1960. On December 9, 1959, the taxpayer, Joseph V. Reed, Jr., married the former Marie Myers, then residing at 908 Fifth Avenue, New York City, at the Municipal Building, New York City. After their honeymoon, the taxpayers, in January 1960, were domiciled in Guilford, Connecticut.

In February, 1960 the taxpayer, Joseph V. Reed, Jr., again became ill and withdrew from Yale University and was confined to New York Hospital, New York City, until March, 1960. The taxpayer went to Florida for health reasons upon the advice of his physicians. His wife accompanied him. They remained there from March until the end of May, 1960. On June 1, 1960, the taxpayers purchased a cooperative apartment located at 447 East 97th Street, New York City. Extensive alterations were required to be made in the apartment prior to its occupancy. During the period that alterations were being made in the cooperative apartment, the taxpayers were living in Connecticut with the husband's parents and on occasion came into New York City to supervise the alterations. The taxpayers' first child was born on September 18, 1960 in New York City. The taxpayers were vacationing in Florida from October to December, 1960.

On January 1, 1961, the taxpayers and their daughter moved into the cooperative apartment located in New York City. In February, 1961, the taxpayer, Joseph V. Reed, Jr., returned to Yale University. He lived in a hotel in New Haven, Connecticut until his graduation in June, 1961. During this period said taxpayer lived with his family in New York City on weekends and holidays. He rejoined his wife and family in New York in June, 1961 and remained there until the end of September, 1961. On

October 1, 1961 the taxpayer, Joseph V. Reed, Jr., accepted a temporary position with the International Bank for Reconstruction & Development in Washington, D. C. and leased a furnished house in Washington, D. C. for the period from September 1, 1961 to August 31, 1962. He remained in Washington, D. C. with his family until the Fall of 1962. In the Fall of 1962, the taxpayer's family returned to New York City to the cooperative apartment. The taxpayers' second daughter was born in December, 1962 in New York City. The taxpayer, Joseph V. Reed, Jr., accepted a position with the Chase Manhattan Bank effective January, 1963 and has been employed there ever since. The taxpayers retained exclusive ownership of the cooperative apartment in New York City from June 1, 1960 up to the present time. It was not sublet nor was it occupied by anyone except the taxpayers.

The taxpayer, Joseph V. Reed, Jr., was admitted as an elector in the Town of Greenwich, Connecticut on October 15, 1960. He voted from Connecticut in 1960 by absentee ballot. He did not vote in 1961, but voted by absentee ballot in 1962.

The sojourns of the taxpayer, Joseph V. Reed, Jr., motivated by reasons of health upon the advice of his physician and his places of abode during said periods were temporary in character. Texas v. Florida, 306 U.S. 398; In Re Eisenberg's Estate, 177 Misc. 655, 31 N.Y.S. 2d 380; Matter of Marks, 176 Misc. 330; 27 N.Y.S. 2d 493. Ordinarily, the domicile of the wife follows that of the husband (Matter of Baggett, 255 N.Y. 243).

For the purpose of the New York Personal Income Tax Law (Section 350(7) of Article 16 and Section 605 of Article 22), a resident is defined as a natural person who is either --

(1) domiciled in the State and who either (a) maintains a permanent place of abode within the State or (b) maintains no permanent place of abode without the State or (c) spends in the aggregate more than 30 days of the taxable year within the State; or

(2) one who, though domiciled outside the State, maintains a permanent place of abode in the State and spends in the aggregate more than 183 days in this State.

Domicile is the place where one lives and has his principal establishment, every person having one and only one. Actual residence is not necessarily domicile, for domicile is the fixed place of habitation, including a residence which in the intention of the taxpayer is permanent rather than transitory. A domicile once obtained continues until a new one is acquired. The avowed intention controls, and there must be both intent to change

and actual change. 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 (20 BROWN, Section 269.2).

In 1939, the taxpayer's wife was a domiciliary of the State of New York and spent more than 30 days therein. Since the taxpayer, Joseph V. Reed, Jr., did not maintain a permanent place of abode and spend more than 183 days within the State during 1939, I am of the opinion that he cannot be deemed to have been a resident, for income tax purposes, during said year within the intent and meaning of Section 30(7) of the Tax Law.

It has been held that the word "resident" as used in Section 7, Article XII of the New York State Constitution is synonymous with the word "domicile" (see Application of HUNTER, 138 N.Y.S. 2d 163). However, the ruling in the above mentioned the pending position of the taxpayer, Joseph V. Reed, Jr., merely decided that said taxpayer was not a domiciliary of this State on January 1, 1960. It did not decide the date he did become a domiciliary of the State of New York.

In hearing determination in the Matter of Joseph J. Miller dated December 8, 1947 (copy attached), the taxpayer, a domiciliary of the State of Illinois entered into a written lease of an apartment in New York City for a term of two years, nine months commencing January 1, 1950 but did not actually remove to New York and maintain a place of abode therein prior to January 13, 1950. It was held that the taxpayer effected a change of domicile on January 13, 1950, the date she actually moved into the apartment.

The instant case is to be distinguished from that of In re Estate of Miller, 145 App. Div. 400, 130 N.Y.S. 722, where the decedent had resided for many years in New York City and had been engaged in business there; that for between three and five years he had resided in an apartment hotel in New York City; that in 1910 he bought a plot of land at Long Branch, New Jersey and in April, 1911, went to Long Branch, New Jersey taking his personal belongings with him; that from that time until the date of his death on September 5, 1911, he resided in Long Branch with his son, who lived there; that his house was nearing completion; that he reportedly stated that he intended to make Long Branch his residence and that he had come down there to establish a voting residence. The Appellate Division held that there was sufficient evidence to establish both the fact of a change of residence and an intent and that it was immaterial whether the decedent lived in his son's house, instead of his son. In the instant case, the taxpayer did not abandon their Connecticut domicile until they actually removed to the cooperative apartment on January 1, 1961.

In People ex rel. Mackall v. Bates, 278 App. Div. 724, the Court sustained the findings of the Tax Commission that the petitioner maintained a permanent place of abode in New York while he worked in Washington, D. C.; that he was domiciled in New York and spent more than 30 days therein and did not maintain a permanent place of abode in Washington, D. C.

I am of the opinion that the taxpayers were not domiciliaries of the State of New York during the calendar year 1960; that they did not maintain a permanent place of abode and spend more than 183 days within the State during said year; that they were not residents of the State for 1960 within the intent and meaning of Section 605 of the Tax Law.

I am of the further opinion that when the taxpayer, Joseph V. Reed, Jr., leased a furnished home in Washington, D. C. in connection with his temporary employment there, such abode was temporary. He was and still remained a domiciliary of the State of New York, maintained a permanent place of abode and spent more than thirty days therein during the years 1961 and 1962. The taxpayers were, therefore, residents of the State of New York, for income tax purposes, during the years 1961 and 1962 within the intent and meaning of Section 605 of the Tax Law.

For the reasons stated above, I recommend that the determination and the decision of the Tax Commission in the above matters be substantially in the forms submitted herewith.

/s/

SOLOMON SIES

HEARING OFFICER

April 24, 1969

SS:SS

Enc.

JS

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
JOSEPH V. REED, JR.
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEAR 1959

The above-named taxpayer having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N. Y. on June 16, 1966 before Solomon Sles, Esq., Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Winthrop, Stebbins, Putnam & Roberts, Esqs., by Roland Stebbins III, Esq., of Counsel, and the matter having been examined and considered,

The State Tax Commission hereby finds:

- (1) That on May 12, 1964 the taxpayer Joseph V. Reed, Jr. filed a New York State Income Tax Resident Return for the year 1959; that on the same date the taxpayers Joseph V. and Marie B. Reed, Jr., similarly filed New York State Income Tax Resident Returns for the years 1960, 1961 and 1962; that taxpayers remitted payment of the taxes for the aforementioned years, computed to be due together with interest computed to May 8, 1964 in the amounts of \$2,090.78, \$7,311.60, \$6,896.85 and \$6,369.28 for the respective

years 1959 through 1962.

(2) That on November 4, 1964 the taxpayers filed claims for refund on Form IT-113-X for the years 1959, 1960, 1961 and 1962 on the ground that it had been determined on May 15, 1964 in a proceeding instituted in Supreme Court, New York County that the taxpayer Joseph V. Reed, Jr. had not been a resident of the State of New York for the five-year period preceding January 1, 1963 in accordance with the provisions of Article III, Section 7 of the New York State Constitution; that the aforementioned proceeding was brought to invalidate the nominating petitions filed with the Board of Electors by the taxpayer Joseph V. Reed, Jr. to qualify as a Republican Party candidate in the Primary Election for member of the Assembly of the State of New York, 8th Assembly Dist., N. Y. County; that the taxpayers contend they were not residents of the State of New York during the years 1959 through and including June 30, 1962, and that the determination of the Supreme Court in the proceeding heretofore referred is binding on the New York State Tax Commission; that the claims for refund were denied; that the taxpayer filed a demand for hearing with respect to 1959.

(3) That during 1958 and prior thereto, the taxpayer Joseph V. Reed, Jr. was a domiciliary of the State of Connecticut residing with his parents in Greenwich, Connecticut and attending Yale University; that prior to January 1, 1959, the aforementioned taxpayer withdrew from Yale University due to ill health; that during the period from January 1, 1959 to the end of May, 1959, he was in New Mexico and Florida convalescing

upon the advice of his physicians; that the aforementioned taxpayer leased an apartment located at 7 East 63rd Street, New York City for the period commencing on the 16th day of June, 1959 and terminating on the 30th day of September, 1959; that the leasing of the aforementioned apartment was for the purpose of recuperating from an operation performed in June, 1959 at Doctors Hospital, New York City.

(4) That the taxpayer Joseph V. Reed, Jr. returned to Yale University in September 1959 to complete his senior year; that he rented a house in Guilford, Connecticut for the period from September 1959 to June 1960; that on December 9, 1959 the taxpayer, Joseph V. Reed, Jr. married the former Marie Myers, then residing at 988 Fifth Avenue, New York City, at the Municipal Building, New York City; that after their honeymoon the taxpayers in January, 1960 were domiciled in Guilford, Connecticut.

(5) That in February, 1960 the taxpayer, Joseph V. Reed, Jr. again became ill and withdrew from Yale University; that he was confined to New York Hospital, New York City until March 1960; that said taxpayer went to Florida for health reasons upon the advice of his physicians; that his wife accompanied him; that they remained there from March until the end of May 1960.

(6) That on June 1, 1960 the taxpayers purchased a cooperative apartment located at 447 East 57th Street, New York City; that extensive alterations were required to be made in the apartment prior to its occupancy; that during the period that alterations were being made in the cooperative apartment, the taxpayers were living in Connecticut with the

husband's parents and on occasion came into New York City to supervise the alterations; that the taxpayers' first child was born on September 18, 1960 in New York City; that the taxpayers were vacationing in Florida from October to December, 1960; that on January 1, 1961 the taxpayers and their daughter moved into the cooperative apartment located in New York City; that the taxpayers effected a change of domicile from Connecticut to the State of New York on January 1, 1961; that prior to January 1, 1961, the taxpayers did not maintain a permanent place of abode within the State.

(7) That in February 1961, the taxpayer Joseph V. Reed, Jr. returned to Yale University; that he lived in a hotel in New Haven, Connecticut until his graduation in June 1961; that during this period said taxpayer lived with his family in New York City on weekends and holidays; that he rejoined his wife and family in New York in June, 1961 and remained there until the end of September, 1961; that on October 1, 1961 the taxpayer Joseph V. Reed, Jr. accepted a temporary position with International Bank for Reconstruction & Development in Washington, D. C. and leased a furnished house in Washington, D. C. for the period from September 1, 1961 to August 31, 1962; that he remained in Washington, D. C. with his family until the fall of 1962; that in the fall of 1962 taxpayer's family returned to New York City to the cooperative apartment; that the taxpayers' second daughter was born in December, 1962 in New York City; that the taxpayer Joseph V. Reed, Jr. accepted a position with the Chase Manhattan Bank in New York City effective January 1963 and has been employed there ever since; that the taxpayers retained exclusive ownership of the

cooperative apartment heretofore mentioned from June 1, 1960 to the date of the hearing; that it was not sublet nor was it occupied by anyone except the taxpayers; that the abode maintained by the taxpayers in Washington, D. C. was temporary.

(8) That the taxpayer Joseph V. Reed, Jr. was admitted as an elector in the Town of Greenwich, Connecticut on October 15, 1960; that he voted in Connecticut by absentee ballot from Florida in 1960 and from Washington, D. C. in 1962; that he did not vote in 1961.

(9) That the taxpayers were and remained domiciliaries of the State of New York from January 1, 1961 to the present time; that they maintained a permanent place of abode within the State of New York during the years 1961 and 1962; that they spent more than thirty days within the State of New York during each of the years 1961 and 1962.

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

DETERMINES:

(A) That during the year 1959 the taxpayer Joseph V. Reed, Jr. was a domiciliary of the State of Connecticut; that during said year he did not maintain a permanent place of abode and spent more than 183 days within the State of New York; that said taxpayer was not a resident of the State of New York, for income tax purposes, within the intent and meaning of Subdivision 7, Section 350 of the Tax Law.

(B) That, accordingly there was no tax due and owing from the taxpayer Joseph V. Reed, Jr. for the year 1959; that said taxpayer's application for refund of income taxes paid by him in the amount of \$2,090.78 for said year be and the same is hereby granted; that there

be refunded to said taxpayer the amount of \$2,090.78 without interest.

DATED: Albany, New York this 15th day of July, 1969.

STATE TAX COMMISSION

Norman Gallivan
PRESIDENT

Richard Masley
COMMISSIONER

Milton Korman
COMMISSIONER