

*Pile*

*Personal Income*  
*16 SECS. 374*

STATE OF NEW YORK  
STATE TAX COMMISSION

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CASE LAW CITATIONS \_\_\_\_\_

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REMARKS \_\_\_\_\_

\_\_\_\_\_ :

In the Matter of the Application :

of :

The ESTATE OF HERMAN DAMBACHER :

For A Redetermination of a Deficiency :

or for Refund of Personal Income Taxes :

Under Article 16 of the Tax Law for the :

Years 1942 through 1957 :

\_\_\_\_\_ :

DETERMINATION

The taxpayer having filed an application pursuant to Tax Law Section 374 for revision or refund of personal income taxes imposed by Article 16 of the Tax Law for the years 1942 through 1957, and such application having been denied and a hearing thereon duly demanded and held and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The sole issue raised at the hearing of this case is the resident status of Herman Dambacher from 1942 through 1957 under Tax Law Section 350 (7). The computation of the assessments, otherwise due, is conceded to be correct and show a tax due, exclusive of interest and penalties, as follows:

1942	\$282.75	1951	\$1066.50
1943	\$474.00	1952	\$1173.60
1944	\$489.75	1953	\$1173.60
1945	\$382.50	1954	\$1423.00
1946	\$452.50	1955	\$1388.00
1947	\$576.60	1956	\$1472.00
1948	\$896.40	1957	\$1507.00
1949	\$927.90		
1950	\$959.40		

(2) A payment of \$14,645.50 was made in 1965 toward any ultimate liability.

(3) The taxpayer, Herman Dambacher, was born in Indianapolis, Indiana, in 1893. He followed a family occupation of brewmaster.

(4) From 1925 to 1930, the taxpayer lived and worked as a brewmaster in Havana, Cuba. In 1930, he left Cuba because of political unrest and went, successively, to Centerreach, New York; to Troy, New York; to Philadelphia; to Baltimore; and to Syracuse, New York. His last employment and place of dwelling before leaving this country again in 1942 was in Syracuse, New York.

(5) In the early 1930's, the taxpayer and his wife acquired residential property at Centerreach, Town of Brookhaven, Long Island. This was purchased from his wife's relatives and was close to the home of his wife's parents. The taxpayer lived here for two years but was not working while he did so because of prohibition. Thereafter, taxpayer rented dwellinghouses in the city where he worked. He continued to own the Centerreach property until his death.

(6) In 1942, the taxpayer went to Caracas, Venezuela, to start employment with C. A. Cerveceria Caracas, a brewery. He lived in a house owned by his employer. (The assessments impute the value of the house to taxpayer as taxable income.) He furnished this house himself and had servants. He had permanent resident status under Venezuelan law. Around 1950 he found another employer near Caracas, purchased his own home and stayed until 1957. Before he left Venezuela, he notified his correspondents that in the future his permanent residence would be Centerreach, New York.

(7) In 1957 taxpayer returned to this country and lived in the house in Centerreach. He died in March 1959. At his death, he had substantial investments in Venezuela and still owned the house in Caracas.

(8) From 1942 to 1957 the taxpayer came to the United States two or three times for not more than 30 days each and visited friends in Florida, New Jersey, Troy, and Centerreach.

(9) From 1947 to 1954 the taxpayer made large contributions to a Masonic home in Elizabethtown, Pennsylvania, near to which he had formerly lived and worked.

(10) During the summers from 1942 to 1957, the taxpayer's wife frequently visited Centerreach and voted occasionally in local elections. When she was not there, the house was "closed up"; and the pipes were drained to prevent freezing in winter.

(11) The taxpayer's daughter testified that the taxpayer always regarded as his home the place where he worked.

(12) Although the record is long, it is devoid of documents or testimony indicating the taxpayer had any personal interest in the State of New York.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission hereby

**DETERMINES:**

A. The taxpayer was not a domiciliary of New York during the taxable years in question.

B. The taxpayer did not spend more than 183 days in New York State during the taxable periods in question and was not a statutory resident of the State of New York.

C. The notices of additional assessments are erroneous in

their entirety and are hereby canceled in full.

Dated: Albany, New York

STATE TAX COMMISSION

March 9, 1970

*Wynona H. Johnson*

PRESIDENT

*Russell Shalby*

COMMISSIONER

*Milton Kamm*

COMMISSIONER