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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN GARBADE and NELLY GARBADE

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961, 1962
and 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

MARTHA FUNARO, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon MURRAY RAPPAPORT

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Murray Rappaport
Bangilsdorf, Piaker & Rappaport
2521 Vestal Parkway East
Vestal, New York 13850
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

5th day of December, 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
December 5, 1972

**Estates of John Sr. and Nelly Garbade
John H. Garbade, Executor
63 Howard Avenue
Binghamton, New York**

Dear Mr. Garbade:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN GARBADE and NELLY GARBADE : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1961, 1962 and 1963. :
:

The taxpayers petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1961, 1962 and 1963. The case was submitted for decision on the material contained in the file.

ISSUE

Were the petitioners nonresidents of the State of New York for income tax purposes for the years 1961, 1962 and 1963?

FINDINGS OF FACT

1. Petitioners, John Garbade and Nelly Garbade, timely filed New York State income tax returns for the years 1961, 1962 and 1963.
2. The taxpayers in their income tax returns for the years involved originally listed Binghamton, New York as their residence. Subsequently, they filed amended returns and asserted Florida as their residence and claimed a refund of taxes for each year in issue. The refund claims were denied on November 17, 1969.
3. The taxpayers petitioned the Commission asserting error in the denial of the refund claims.
4. The taxpayers lived in Binghamton, New York since the 1920's.

5. The taxpayers maintained a residence home on Howard Avenue, Binghamton, New York during all the years in issue and for many years prior thereto. During the years in issue, the taxpayers spent time in and out of New York State as follows:

1961

Hollywood, Florida - January 1, 1961 through May 8, 1961.
Left Hollywood, Florida - May 9, 1961.
Arrived Binghamton, New York - May 11, 1961.
He spent two weeks during the summer of 1961 at his cottage at Laurel Lake, Pennsylvania.
Left Binghamton, New York - October 30, 1961.
Arrived Florida - November 1, 1961.
Hollywood, Florida - November 1, 1961 to December 31, 1961.

1962

Hollywood, Florida - January 1, 1962 to April 20, 1962.
New York - April 21, 1962 to December 26, 1962 (left Florida early in order for his wife to undergo surgery in New York on or about May 15, 1962, and again in June of 1962).
Left New York via plane - December 27, 1962 for Hollywood, Florida.
Hollywood, Florida - December 27, 1962 to December 31, 1962.

1963

Hollywood, Florida - January 1, 1963 to May 5, 1963.
Left Hollywood, Florida - May 6, 1963, by plane.
Arrived New York - May 7, 1963.
New York - May 7, 1963 to October 31, 1963, with the exception of one week during the summer spent at the cottage at Laurel Lake.
Left New York - October 31, 1963, for Hollywood, Florida.
Hollywood, Florida - October 31, 1963 to December 31, 1963.

The taxpayers asserted that they were domiciled in Florida and asserted the following factors supported their contention, and offered to bring arguments to corroborate these facts:

- a.) The taxpayers had filed individual intangible personal property tax returns of the State of Florida.
- b.) They had received a receipt for Homestead tax exemptions of Broward County, Florida.
- c.) The taxpayers had registered a 1959 Dodge with the State of Florida, Department of Motor Vehicles.
- d.) John Garbade had registered in Broward County, Florida in March in 1964 and had voted in Florida elections.

The taxpayers asserted that they intended Florida to be their domicile and residence.

Nelly Garbade's will executed in 1954, was probated in 1965 in Broome County, New York. The will recited her residence as Binghamton, New York.

CONCLUSIONS OF LAW

A. The taxpayers were domiciled in New York State during each of the years in question, maintained a permanent place of abode in New York State and spent more than 30 days during each of the years in issue in New York State. Their residence home in New York, and the amount of time spent in New York indicate that they continued to be domiciliaries of New York.

B. The taxpayers were residents of New York State for income tax purposes during each of the years in issue.

C. The denial of the claims for income tax refunds is sustained.

DATED: Albany, New York
December 5, 1972

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER