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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY F. LEMIEUX & MARJORIE H.
LEMIEUX

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) 1965 & 1966

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 2nd day of August , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Henry F. & Marjorie H. Lemieux (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Henry F. & Marjorie H. Lemieux
24 Pryer Lane
Larchmont, New York 10538

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

2nd day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 2nd day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Adrian W. Rosenbaum, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Adrian W. Rosenbaum, C.P.A.
c/o Marshall Granger & Co.
60 East 42nd Street
New York, New York 10017
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

2nd day of August, 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 2, 1972

**Henry F. & Marjorie M. Lemieux
24 Fryer Lane
Larchmont, New York 10538**

Dear Mr. & Mrs. Lemieux:

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

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
HENRY F. LEMIEUX AND :
MARJORIE H. LEMIEUX : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1965 and 1966. :

Petitioners, Henry F. Lemieux and Marjorie H. Lemieux, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 and 1966. (File No. 56727699). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on February 16, 1972, at 10:45 A.M. Marshall Granger & Company, C.P.A.'s by Adrian Rosenbaum, C.P.A. and Gus Uhry, C.P.A. appeared for petitioners. Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUE

Were petitioners, Henry F. Lemieux and Marjorie H. Lemieux, resident individuals during the years 1965 and 1966?

FINDINGS OF FACT

1. Petitioners, Henry F. Lemieux and Marjorie H. Lemieux, filed a New York State income tax nonresident return for the period from January 1, 1965 through July 11, 1965. They excluded in said return from total New York income, the income received by them while they were living in England during said period. Simultaneously, they filed a New York State income tax resident return for the period from July 11, 1965 through December 31, 1965. They included in said return, the income received by them upon their return to New York State.

2. Petitioners, Henry F. Lemieux and Marjorie H. Lemieux, filed a New York State income tax resident return for the year 1966. They filed said return on April 13, 1967. On September 10, 1967, they filed an amended New York State income tax resident return. In the amended return they excluded from total income, commissions earned by petitioner, Henry F. Lemieux, while employed in England in the year 1965, but not paid until the year 1966. They requested a refund of \$564.61.

3. On November 25, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Henry F. Lemieux and Marjorie H. Lemieux, imposing New York State personal income tax for the year 1965 upon their total income from all sources for said year and accordingly issued a Notice of Deficiency in the sum of \$948.72.

4. On December 16, 1968, the Income Tax Bureau issued a Notice of Disallowance, disallowing petitioners, Henry F. Lemieux and Marjorie H. Lemieux's claim for refund for the year 1966.

5. Petitioner, Henry F. Lemieux, was employed by Raymond Concrete Pile Corp. prior to 1962. He and his wife, petitioner, Marjorie H. Lemieux, resided in New York State. In December, 1962 he was transferred to the London, England office of Raymond International, Inc., the parent company of his former employer. The corporation's headquarters was in New York. He entered into a written employment contract for a term of five years, unless terminated by the company at an earlier date. He received a salary plus an incentive commission. He sold his home in New York and moved with his family to London. He leased a home in London. His children attended an English school. He terminated his affiliation with various social organizations in New York State. He declared on his British income tax returns that he was not domiciled in England. He returned to the United States on July 11, 1965, to

become president of Raymond International, Inc. His family returned to the United States with him and they purchased a home in Larchmont, New York.

6. Petitioners, Henry F. Lemieux and Marjorie H. Lemieux, have resided in a home in Larchmont, New York from July 11, 1965, to the present time.

7. Petitioners, Henry F. Lemieux and Marjorie H. Lemieux, spent 173 days during the year 1965 and substantially all of the year 1966 in New York State.

CONCLUSIONS OF LAW

A. That during the years 1965 and 1966, petitioners, Henry F. Lemieux and Marjorie H. Lemieux, were domiciled in New York State, maintained a permanent place of abode in New York during a portion of the year 1965 and during all of the year 1966, and spent more than 30 days in each of the taxable years in New York State and, therefore, all of their income was subject to New York State personal income tax as resident individuals in accordance with the meaning and intent of 20 NYCRR 102.2(d) and section 605(a)(1) of the Tax Law.

B. That since petitioners, Henry F. Lemieux and Marjorie H. Lemieux, were cash basis taxpayers during the year 1966 and since they were residents of New York State during said year, therefore, all of the income they received during said year, including commissions earned by petitioner, Henry F. Lemieux, while employed in England in the year 1965, but not paid until the year 1966, was subject to the New York State personal income tax.

C. That the petition of Henry F. Lemieux and Marjorie H. Lemieux is denied and the Notice of Deficiency issued November 25, 1968, and the Notice of Disallowance issued December 16, 1968, are sustained.

DATED: Albany, New York

August 2, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Russ Mowley
COMMISSIONER

Walter Krum
COMMISSIONER