

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELMER LUCHTERHAND

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) 1964, 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 29th day of March , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Elmer Luchterhand

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

wrapper addressed as follows: Elmer Luchterhand
46 Overton Road
Scarsdale, New York 10583

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

29th day of March , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 29th day of March , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon David M. Furman, 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: David M. Furman, C.P.A.
402 Mamaroneck Avenue
White Plains, New York 10605
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

29th day of March , 19 72

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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 29, 1972

**Elmer Luchterhand
46 Overton Road
Scarsdale, New York 10583**

Dear Mr. Luchterhand:

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,


Lawrence A. Newman
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ELMER LUCHTERHAND : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1964, 1965 and 1966. :

Elmer Luchterhand petitioned for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1964, 1965 and 1966.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on July 22, 1971. The petitioner appeared and was represented by David M. Furman, C.P.A. Edward H. Best, Esq., (Solomon Sies, Esq. of Counsel) represented the Income Tax Bureau.

ISSUE

Whether the petitioner was a resident of the State of New York, for income tax purposes, during the years 1964, 1965 and 1966, within the meaning and intent of section 605 of the Tax Law.

FINDINGS OF FACT

1. Elmer Luchterhand and Patricia Luchterhand, his wife, jointly filed United States individual income tax returns for the years 1964, 1965 and 1966. The home address appearing on the tax returns was 46 Overton Road, Scarsdale, New York.

2. For the years 1964, 1965 and 1966, Elmer Luchterhand filed separate New York State income tax nonresident returns, listing his home address as 316 Thornton Street, Hamden, Connecticut.

3. For the years 1964, 1965 and 1966, Patricia Luchterhand filed separate New York State income tax resident returns, listing her home address as 46 Overton Road, Scarsdale, New York.

4. On April 10, 1968, the Income Tax Bureau issued a Notice of Deficiency, under File No. 53233492, for the years 1964, 1965 and 1966, in the amount of \$2,316.70, plus interest.

The deficiency was based on a determination by the Income Tax Bureau that the petitioner was a resident of the State of New York for income tax purposes, and therefore, all of his income, earned within and without the State, was taxable.

5. A petition for redetermination of the deficiency was timely filed on behalf of Mr. Luchterhand.

6. The petitioner and his wife purchased in the year 1958, as tenants by the entirety, a home located at 46 Overton Road, Scarsdale, New York. They occupied the house together with their two children. The petitioner at the time was on the faculty of Sarah Lawrence College.

7. In the year 1962 and until 1967, the petitioner was employed as research director with Community Progress, Inc. The corporation was created for the purpose of making in-depth studies of social problems and behavior among teenagers in the inner city areas of New Haven and Bridgeport, Connecticut. The activity was financially supported by the Ford Foundation, the Federal Government, and Yale University. During the same period, the petitioner was a research associate at Yale University, and taught one course at Albertus Magnus College, in Connecticut.

8. During the term of his position, the petitioner leased a furnished apartment in Hamden, Connecticut on a month-to-month basis, at a rental of \$70.00 per month.

9. During the period of employment in Connecticut, the petitioner visited with his family in New York State but he could not recall or substantiate the number of days he was present within New York State.

10. The petitioner's name appears on the voter registration lists in Hamden, Connecticut during the years 1964, 1965 and 1966. In the year 1963, the petitioner registered his automobile in the State of

Connecticut, and held an operator's license issued by the same State. In the years 1964, 1965 and 1966, the petitioner paid a personal property tax based on the value of his 1956 Volkswagen automobile to the Town of Hamden. The petitioner and his wife maintained a joint savings account in the City of New Haven.

11. His employment was concluded due to the exhaustion of supporting funds for the projects, and the petitioner then turned to New York State for further employment in his field. He currently resides with his wife in Scarsdale, New York.

12. The petitioner conceded that he was domiciled and resident in the State of New York prior to his employment in Connecticut.

13. During the years 1964, 1965 and 1966, the petitioner was domiciled in the State of New York, and maintained a permanent place of abode both in the States of New York and Connecticut.

14. The petitioner has failed to prove that he did not spend any part of more than thirty days in each of the years in question in New York State.

DECISION

A. The petitioner was a resident of the State of New York for income tax purposes during the years 1964, 1965 and 1966, within the meaning and intent of section 605 of the Tax Law.

B. The petitioner's entire income from whatever source derived is taxable by New York State.

C. The deficiency is sustained and the petition is denied.

DATED: Albany, New York
March 29, 1972

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bruce Marley

COMMISSIONER

Milton Kuen

COMMISSIONER

Income Tax

**BUREAU OF LAW
MEMORANDUM**

TO: Commissioners Gallman, Manley and Koerner

FROM: Saul Heckelman, Counsel

SUBJECT: Elmer Luchterhand v. State Tax Commission
(Proposed settlement of Article 78 proceeding)

Attached are copies of Joseph J. Buderwitz, Jr., Esq. August 14, 1972 letter to Assistant Attorney General Vincent P. Molineaux, suggesting settlement of the above proceeding, Mr. Molineaux's September 1, 1972 letter to me recommending that the offer of settlement be accepted due to the possibility of an adverse decision by the courts in this case and the large backlog of tax cases presently in litigation, a copy of my November 14, 1972 letter of reply to Mr. Molineaux recommending a counter-offer and the November 10, 1972 approval thereto of John F. Donovan.

By letter dated December 7, 1972 (attached) Mr. Molineaux has advised me that he has received a communication from counsel for the petitioner that his client is prepared to settle the matter based upon my counter-offer provided he could pay one-half of the amount immediately and the balance, with additional interest computed on that balance, within a period of six months from the date of the settlement.

In view of the large backlog of our cases with the Attorney General, I recommend that the proposed offer in settlement be accepted. Please indicate your acceptance or rejection of the proposed settlement on this memorandum and return to me.

Saul Heckelman

Counsel

JS:lk
Enc.
December 12, 1972

*Settlement approved on
basis of counter-offer of
Mr. Saul Heckelman
Walter Koerner - 12/26/72
Commissioner Gallman - 12/25/72*