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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLIN L. and ELIZABETH A. GURLEY

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) 1967 & 1968.

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 13th day of February, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon FRANKLIN L. and ELIZABETH A. GURLEY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. and Mrs. Franklin L. Gurley
c/o Nestle Alimentana S.A.
1800 Vevey, Switzerland

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
13th day of February, 1974.

Joyce L. VanPatten

Martha Funaro

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

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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 13th day of February, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon EDWIN A. HAWKINSON, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edwin A. Hawkinson, Esq.
c/o Gibney, Anthony & Ferguson
420 Lexington Avenue
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
13th day of February, 1974

Martha Funaro

Joyce S. Van Patten

AD-1.30 (1/74)

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
Mario A. Procaccino
PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 13, 1974

Mr. and Mrs. Franklin L. Gurley
c/o Nestle Alimentana S.A.
1800 Vevey, Switzerland

Dear Mr. and Mrs. Gurley:

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 decision 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,

Nigel G Wright

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of FRANKLIN L. and ELIZABETH A. GURLEY for a Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1967 and 1968.	DECISION

Franklin L. and Elizabeth A. Gurley, filed a petition under section 689 of the Tax Law for a redetermination of a deficiency issued under date of June 28, 1971, in the amount of $3,171.12, plus interest of $562.83, for a total of $3,733.95 for personal income tax under Article 22 of the Tax Law for the years 1967 and 1968.

A hearing was duly held on September 14, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Edwin A. Harkinson, Esq., of Gibney, Anthony & Ferguson. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issues in this case are whether petitioners changed their domicile from New York to France in 1963, and if, when they returned to New York in 1967 they reacquired a New York domicile, (which they do not necessarily contest) whether they again changed their domicile from New York to Switzerland in 1968.

FINDINGS OF FACT

1. Immediately prior to 1963, petitioners were domiciles and residents of New York State. They have always retained their United States citizenship.

2. Mr. Gurley was born in Syracuse, New York, but he and his parents had moved to other states and were domiciled in Newton, Massachusetts, when he entered the armed forces. He was stationed in France and Germany from 1944 to 1946 and requested, in the event of his death, to be buried in France. Mr. Gurley received his undergraduate degree in 1949 and law degree in 1952 both at Harvard. Petitioners were married in 1950. Mr. Gurley entered the United States Foreign Service and served in Bonn, Germany until 1955.

3. In March 1955, Mr. Gurley began the practice of law as a staff attorney with the New York Central Railroad in Detroit, Michigan. In May 1956, he was transferred to New York City. Petitioners at that time leased an apartment at 90 Laurel Hill Terrace, Manhattan. In July 1956, Mr. Gurley joined the staff of the New York County District Attorney and in April 1957 became an associate of a large New York City law firm and remained there until 1963. While there, he specialized in international corporate matters requiring travel to many European countries and in litigation. While there, Mr. Gurley successfully took the bar exams in Illinois and District of Columbia in the event that he wished to practice international law in such places. During this time, he moved from Manhattan to Tarrytown and then to Briarcliff Manor.

4. In March 1963, Mr. Gurley found and accepted a legal position with IBM Europe Corp. of France and remained with them through several promotions until October 1967 when he was serving as General Counsel and Secretary. After a three-month orientation period at IBM International in New York City, he and his wife had moved to Paris. They sold their Briarcliff Manor home at this time and moved their furniture to Europe. They entered France on a "Long Sejour" visa. They rented an apartment in Neuill from July 1963 until January 1967. Petitioners also purchased and owned an apartment and a studio apartment in the City of Paris. They rented a house near Versailles from February to April 1964 when they purchased a farm house at Garne which, however, needed renovation and they moved to a rented house close-by in Levis St. Nom, Seine et Oise while that would be done. They later sold the Garne property and purchased another farm house in Adainville again with the intention of renovation. They also owned a summer home in Chatre near Sens, France. Petitioners did not sell these properties when they left France in 1967. While in France, petitioners paid income taxes to France under Article 51 of the Finance Law of December 31, 1935.

5. While in Paris, Mr. Gurley investigated other employment opportunities but nothing apparently materialized and he thought that he could better contact international corporations if he were in the United States. He requested IBM to transfer him back to the United States. Although IBM does not normally hire

experienced lawyers for their staff they did create a new position for Mr. Gurley. In January 1968, three months after he had left France, a letter reached him offering a position with Nestle Alimentana S.A. in Switzerland.

6. In October 1967, Mr. Gurley became managing attorney for anti-trust operations with IBM, stationed at Armonk, New York. Petitioners resided at a motel in Hawthorne, New York from October 10 to December 24, 1967, when they purchased and moved into a house in Briarcliff Manor. Mr. Gurley continued to look for a better position in the international field. Mr. Gurley accepted another job with Nestle in March 1968 and immediately listed the Briarcliff Manor house for sale. Mr. Gurley left the IBM job at the end of May, 1968. He finally sold the house in January 1969 at a loss of $5,000.

7. On July 1, 1968, Mr. Gurley took up his new duties in Vevey, Switzerland, with Nestle Alimentana, S.A. as their General Counsel and as a member of their management committee. Petitioners rented a summer home at Grandvaus and then rented a home at Le Caudrey in Forel, Switzerland. They could not buy property in Switzerland because of legal restrictions on aliens with less than five years residence. They have purchased a home in Greece for vacation and possible retirement use. They continue to own their farm properties in France. Petitioners have secured Swiss drivers licenses and residence permits that are granted only to foreigners with permanent employment. They pay Swiss taxes on both income and "personal fortune."

8. Mr. Gurley filed resident New York returns for the last part of 1967 and the first part of 1968. The figures are not in dispute and presumably, because there is little investment income, the petitioners resident status as stated thereon is not contested by him. The deficiency in issue is based upon an assertion that petitioners were domiciliaries of New York during all of 1967 and 1968.

CONCLUSIONS OF LAW

It has clearly been shown that petitioners changed their domicile in 1963 from New York to France. While it is also probable that they changed their domicile to New York in 1967 it has been clearly shown that they changed their domicile again to Switzerland in 1968.

The deficiency is erroneous and is cancelled in its entirety.

DATED: Albany, New York
February 13, 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER