

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNE H. JENSEN and RHODA A. JENSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~20~~ 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1965 and 1966.

State of New York
County of Albany

Catherine Steele, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Arne H. Jensen and Rhoda A. Jensen (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Arne H. Jensen
Nichols Road
Nesconset, New York 11767 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 Postal Service within the State of New York.

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

Sworn to before me this
20th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ARNE H. JENSEN and RHODA A. JENSEN

for Redetermination of a Deficiency or
for Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Years
1965 and 1966.

DECISION

Petitioners, Arne H. Jensen and Rhoda A. Jensen, have filed petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1965 and 1966 (File No. 01289). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1976, at 10:45 a.m. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether the petitioners, Arne H. Jensen and Rhoda A. Jensen, were residents of the State of New York in 1965 and 1966.

FINDINGS OF FACT

1. Petitioners, Arne H. Jensen and Rhoda A. Jensen, filed a joint New York State Non-Resident Return for 1965 from a California address on which the earned income of Arne H. Jensen was allocated between New York and California. That tax return indicated no New York income tax owed.

2. The New York State Income Tax Bureau Withholding Tax Statement (Form IT-2102) showed gross wages of \$9,007.40 paid to petitioner A. H. Jensen, at a Nesconset, New York address and New York income tax withheld of \$222.44.

3. On October 7, 1966, the petitioners, Arne H. Jensen and Rhoda A. Jensen, filed a petition demanding a refund of the \$222.44 withheld on behalf of New York State for the year 1965. On October 10, 1966, that claim was disallowed.

4. On April 12, 1967, the petitioners, Arne H. Jensen and Rhoda A. Jensen, filed a New York State Income Tax Resident return (Form IT-201) stating that they had no New York State earnings in 1966 prior to September 1, of that year. Of the total of \$10,334.54 earnings, the petitioners reported \$3,436.27 as attributable to New York sources. They claimed a refund of \$115.55.

5. On November 1, 1967, a Notice of Deficiency was issued against petitioners, Arne A. Jensen and Rhoda A. Jensen, by the Income Tax Bureau for the sum of \$22.34 for 1966 income tax due.

6. The two "Wage and Tax Statements" (Form W-2) for 1966 from the employer, Cutler-Hammer Inc. showed gross earnings of \$10,334.54 by petitioner, Arne H. Jensen. The employer attributed \$4,274.86 to California earnings and \$6,059.68 to New York wages. Petitioner was employed by Cutler-Hammer in New York from February to April 1966, in California from May to August, and from September 4, 1966, thereforth in their Deer Park, New York plant.

7. The petitioner, Arne H. Jensen, was a field engineer living with his wife and child in Marysville, California and working for North American Aviation Co. in Anaheim, California for a number of years prior to January 1965.

8. In January, 1965, the petitioner, Arne H. Jensen came to New York on vacation. He obtained employment with Cutler-Hamer, Inc. to handle a field project in California. He returned to his California home, gave a two-week notice to North American Aviation, and came back to New York for a three month training program for the new assignment. From April, 1965 until August, 1966, the petitioner, Arne H. Jensen, maintained his residence in Maryville, California, while he worked at an Air Force installation in Northern California.

9. In August, 1966, the petitioner, Arne H. Jensen, decided to give up field work and transfer to the home plant of AIL Division of Cutler-Hammer, Inc. in Deer Park, New York. He moved his family to Nesconset, New York into a house he had partially constructed between 1960 and 1962. That house had been boarded up from December, 1963 to January, 1965. It was not sufficiently completed to place on the market for sale.

10. Petitioners, Arne H. and Rhoda A. Jensen, filed and paid state and Federal income taxes in 1965 and part of 1966 as California residents.

11. Petitioners, Arne H. and Rhoda A. Jensen, had removed their domicile from Alaska to California in 1958 or 1959. Petitioners changed that domicile to New York as of September 1, 1966.

12. Both of petitioner, Arne H. Jensen's employers recorded his address on the "Wage and Tax Statements" (Form W-2) as Nesconset, N.Y. The use of this address was said to be due to the administrative convenience of the employer, who actually forwarded all mail to petitioner's field location which for security reasons was not made a matter of record.

CONCLUSIONS OF LAW

A. That petitioners, Arne H. Jensen and Rhoda A. Jensen, did maintain a permanent place of abode in Nesconset, N.Y. but were domiciled in California prior to September 1, 1966 and in 1965 spent less than 183 days in New York. Under Tax Law Section 605(a)(2), petitioners were not New York State residents in 1965.

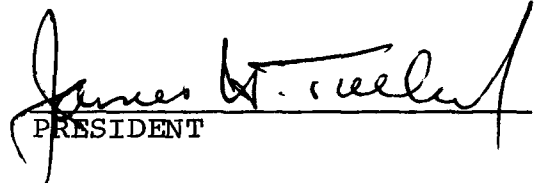
B. That petitioners, Arne H. Jensen and Rhoda Jensen, became domiciled in New York as of September 1, 1966. They were taxable as New York State residents from September 1, 1966 to December 31, 1966 under Tax Law Section 605(a)(1). However, their income earned in California prior to September 1, 1966 was not subject to New York State income tax under section 654(c)(2).

C. That the petition of Arne H. Jensen and Rhoda A. Jensen is granted; that the Income Tax Bureau is directed to refund the sum of \$378.31 together with such interest as may be lawfully owing;

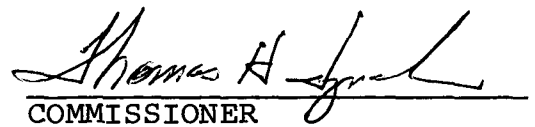
and that the Notice of Deficiency issued November 1, 1967 is cancelled.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSIONER


PRESIDENT


COMMISSIONER


COMMISSIONER