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Income Tax Determinations
A-2
Frazier, Joseph and
Charlotte

Commissioners Murphy, Palastin & Maeduff

Solomon Sien, Hearing Officer

JOSEPH and CHARLOTTE FRAZIER

Petition for Redetermination of a Deficiency
or for Refund of Personal Income Taxes under
Article 22 of the Tax Law for the year 1963.

File #3-8471876

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on November 1, 1963. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayer, Joseph Frazier, was a resident of this State, for income tax purposes, during the year 1963, in accordance with the provisions of Section 605 of the Tax Law. Determinative of the issue is whether the aforementioned taxpayer was a domiciliary of this State and maintained a permanent place of abode in this State.

The taxpayers, both entertainers, were married in 1958 and since 1959, have resided in an apartment at 698 West End Avenue, New York, N.Y. pursuant to a lease which was signed by the husband as tenant. The taxpayer, Joseph Frazier, is a member of the Mitchell Trio, a singing group, formerly known as the Chad Mitchell Trio. Until March 1962 the Trio was managed by one, Bertha Case, a New York resident. In March of 1962, the Trio severed its relations with Miss Case and was managed by Triangle Theatrical Productions, Inc., an Illinois corporation, having its principal place of business in Chicago, Illinois. The wife was, and still is, employed in New York City. The Manhattan telephone directory lists the taxpayer, Joseph Frazier, at the address at 698 West End Avenue.

The taxpayers filed a New York State combined income tax return for the year 1963 in which they indicated their home address as 698 West End Avenue, New York City. However, they claim that this was in error, and that the address indicated on the Federal return was c/o Franklin Fried, 156 East Superior Street, Chicago, Illinois. The taxpayer, Joseph Frazier, on his New York State income tax return indicated adjusted gross income reported on his Federal income tax return in the sum of \$46,875.00 but claimed that only the sum of \$7,612 was attributable to New York State sources. His wife Charlotte reported income in the sum of \$6,241 from the show "How to Succeed in Business Without Really Trying". In connection with

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his activities as a member of the Mitchell Trio, the taxpayer, Joseph Frazier, during the year 1963 was required to be on the road performing in various states throughout the United States for over 225 days of said year. He claimed that his residence is where he works. He spent less than 30 days within the State of New York in 1963.

It is contended that the taxpayer, Joseph Frazier, established a change of domicile from New York to Illinois in March of 1962; that he entered into an agreement of lease of an apartment at 1961 Northern Lincoln, Chicago, Illinois for a period of one year commencing March 8, 1963 and ending March 8, 1964; that he maintains a permanent place of abode in Chicago, Illinois; that the wife, Charlotte, maintains the apartment in New York, and that the rent is paid by her from her own earnings; that the wife is a resident of this State, whereas the husband is not.

The taxpayer, Charlotte Frazier, testified that her husband in 1963 stayed at different places in Chicago; that they are not legally separated; that her husband stayed at least at two different hotels in Chicago in 1963; then he got settled in an apartment (Minutes of Hearing, page 10). When the taxpayer, Joseph Frazier traveled to various cities and states to entertain, he would register at hotels (Minutes of Hearing, page 12). Mrs. Frazier testified that when her husband comes into New York, on occasion, he stays at the apartment on West End Avenue, and that she very often would take a plane and visit him either in Chicago or some other city where he would be engaged during the weekend if she could get away.

The representative for the taxpayers stated at the hearing that the taxpayer, Joseph Frazier, realized he was spending a great deal of money in hotels and that since the Trio was based in Chicago, he decided to lease an apartment there. (Minutes of Hearing, page 11). The taxpayers have not voted either in New York or any other State.

I am of the opinion that the taxpayers were and remained domiciliaries of the State of New York during the year 1963; that the taxpayer, Joseph Frazier, did not evince any intent to change his domicile from this State to any other State nor did he actually effect any change of domicile to the State of Illinois; that his stay in Chicago was of a temporary nature and was no more permanent than his stay at various cities throughout the country where the Trio was required to perform; that the taxpayers maintained a

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permanent place of abode in the State of New York. I am, therefore, of the opinion that the taxpayers were residents of the State of New York, for income tax purposes, during the year 1963, in accordance with the provisions of Section 605 of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

MAY 12 1966

SOLOMON SIES

Hearing Officer

/s/ MARTIN SCHAPIRO
Approved

/s/ SAUL HECKELMAN
Approved

SS:hm (May 23, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

JOSEPH AND CHARLOTTE FRASIER

FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE CALENDAR
YEAR 1963.

Joseph and Charlotte Frasier, the taxpayers herein, having duly filed a petition for redetermination of a deficiency of personal income taxes under Article 22 of the Tax Law for the year 1963, and a hearing having been held in connection therewith at the office of the State Tax Commission at 60 Centre Street, New York, N.Y. on the 1st day of November, 1965, before Solomon Sica, Hearing Officer of the Department of Taxation and Finance, the taxpayer Charlotte Frasier having appeared personally and the taxpayers having been represented by Harvey S. Winberg, C.P.A., c/o Triangle Theatrical Productions, Inc., 156 East Superior Street, Chicago, Illinois, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers Joseph Frasier and his wife Charlotte Frasier filed a New York State combined income tax return for the year 1963 (Form IT 203) in which they indicated their home address as 693 West End Avenue, New York, N.Y.; that the joint amount of income reported by them was in the sum of \$57,116.00; that the income attributable to the husband Joseph Frasier as entertainer and reported on Line 9 of his Federal Income Tax Return adjusted gross income in the sum of \$46,875.00; that the amount attributable to the wife Charlotte Frasier as entertainer amounted to \$6,241.00; that the withholding tax statements (Forms IT-2102) of the taxpayer Joseph Frasier show his address on said withholding tax statements as 693 West End

Avenue, New York, N.Y.; that the taxpayer Joseph Frazier claimed income attributable to New York State sources in the sum of \$7,612.00 and after taking the standard deduction, he requested a refund on said return in the sum of \$674.57; that on April 13, 1965, the Department of Taxation and Finance issued a statement of audit changes against the taxpayers so as to include the entire income of the taxpayer Joseph Frazier in the sum of \$46,875.00 and imposed additional personal income taxes in the sum of \$2,782.56 and accordingly issued a notice of deficiency therefor.

(2) The taxpayers, both entertainers, were married in 1958 and since 1959, have resided in an apartment at 698 West End Avenue, New York, N.Y., pursuant to a lease which was signed by the husband as tenant. The taxpayer, Joseph Frazier, is a member of the Mitchell Trio, a singing group, formerly known as the Chad Mitchell Trio. Until March 1962 the Trio was managed by one, Bertha Case, a New York resident. In March of 1962, the Trio severed its relations with Miss Case and was managed by Triangle Theatrical Productions, Inc., an Illinois corporation, having its principal place of business in Chicago, Illinois. The wife was, and still is, employed in New York City.

(3) That the taxpayers Joseph and Charlotte Frazier have been, since at least 1959, domiciliaries of the State of New York and have maintained a permanent place of abode in the City and State of New York; that they are not legally separated; that in connection with his activities as an entertainer, the taxpayer Joseph Frazier during the year 1963 was required to be on the road performing in various cities and states throughout the United States for over 225 days of said year.

(4) That the taxpayer Joseph Frazier contends that he ceased being a resident of this state since March, 1962; that his wife maintains the apartment in New York City; that said taxpayer further contends that his residence is where he works, outside of the State of New York

and that during 1963 he maintained a permanent place of abode in Chicago, Illinois; that the taxpayer Joseph Frazier has failed to establish that he intended to and did in fact actually effectuate a change of domicile from the State of New York to the State of Illinois and has failed to establish that he maintained a permanent place of abode outside of this State; that the stay of the taxpayer Joseph Frazier in Chicago, Illinois during the year 1963 was of a temporary nature; that said taxpayer's stay in Chicago, Illinois was no more permanent than his stay at various cities throughout the country performing with the other members of the Trio; that the taxpayers Joseph and Charlotte Frazier were and remained domiciliaries of the State of New York during the year 1963 and maintained a permanent place of abode within the State of New York during said year.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

(A) That the taxpayers were and remained domiciliaries of the State of New York during the year 1963 and maintained a permanent place of abode within the State of New York during such year; that the taxpayers were residents of the State of New York for income tax purposes, during the taxable year 1963 within the intent and meaning of Section 605 of the Tax Law.

(B) That, accordingly, the statement of audit charges and the notice of deficiency for the year 1963 are correct; that the case do not include any tax or other charge which could not have been lawfully demanded and that the petition of the taxpayers for redetermination

of deficiency or for refund of personal income taxes for the year 1963
be and the same is hereby dismissed.

DATED: Albany, New York, on the 15th day of June , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner