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Income Tax Determinations A-Z 1966

BUREAU OF LAW

MEMORANDUM Graham, Clara Belle M. + Stuart A.

TO: Commissioners Murphy, Palestin & Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: STUART A. and CLARA BELLE M. GRAHAM

Petition for Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the year 1961.

File #1-8978859

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on January 7, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayers were residents of this State, for income tax purposes, during the year 1961, in accordance with Section 605 of the Tax Law. Determinative of the issue is the question of whether the taxpayers were domiciliaries of the State of New York and spent more than thirty days within this state during the taxable year 1961.

The taxpayers were both born in Buffalo, New York and lived there until December 24, 1943. They voted from Buffalo up to and including 1943. The taxpayer Stuart A. Graham has been employed by Remington Rand Division of Sperry Rand Corporation since 1931 and worked for this firm in Buffalo up to December, 1943. Since then he has worked for the aforementioned employer in foreign countries, Hawaii and in the State of New York. Every time the taxpayer left New York, he was accompanied by his family and they took their personal effects with them. Each time he returned to New York, he returned with his family and their personal effects. From June 30, 1944 to January 2, 1946, they lived in the State of New York. From January 2, 1946, to February 1, 1957, they lived in Hawaii. From February 1, 1957 to September 5, 1958, they lived in New York. From September 5, 1958 to January 22, 1961, they lived in Rio de Janeiro, Brazil.

The taxpayer Stuart A. Graham was assigned by his employer on January 22, 1961 to work as manager of the Office Machines Department, International Division, Remington Rand Division of Sperry Rand Corporation in N.Y.C. The taxpayer and his family removed their furniture and personal effects from Brazil and rented a house, unfurnished, at 1157 Post Road, Scarsdale, N.Y. under a one-year lease with a cancellation clause of three months should he be transferred abroad.

The taxpayer Stuart A. Graham contends that he changed his domicile from New York State to Hawaii in 1946 and as evidence thereof stresses the fact that he executed a will in Hawaii naming a bank located there as executor. It is to be noted, however, that they never returned to Hawaii after 1957 but did return to New York; that their stay there was necessitated by the assignment of employment to said location; that he never intended to surrender his American citizenship and become a national of a foreign country.

In order to constitute a change of domicile both the intent and actual change are required in accordance with Article 501 of the Income Tax Regulations.

I am of the opinion that the taxpayers have failed to establish that they have effected any change of domicile from New York to any other place and that since they and their family spent more than thirty days within the state during the year 1961, they were residents of New York during the year in issue for income tax purposes in accordance with 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.

NOV 22 1965

SOLOMON SIES
Hearing Officer

/s/ MARTIN SCHAPIRO
Approved

/s/ E. H. BEST
Approved.

SS/tc (Dec. 21, 1965)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

STUART A. AND CLARA BELLE M. GRAHAM

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1961.

The taxpayers, Stuart A. and Clara Belle M. Graham, having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 (File #1-8978899) and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, NY, on January 7, 1965, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by the accounting firm of Haskins & Sells, by William R. McNamara, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Stuart A. & Clara Belle M. Graham, filed a New York State income tax resident return for the period beginning January 22, 1961 and ending October 14, 1961, on which they reported gross income earned within the State of New York in the sum of $12,213.55 and dividend income of $795.00, or a total of $13,008.55; that the taxpayers indicated that the gross income earned during the year 1961 amounted to $16,750.00; that during the period from January 1st to January 22, 1961, the sum of $1,046.87 was earned outside the United States; that during the period from October 14 to December 31, 1961, the sum of $3,489.58 was earned outside the United States; that the taxpayers claimed a refund on said return in the sum of $177.09; that on January 6, 1964, the Department of Taxation and Finance made a statement of audit changes in which the entire income of the taxpayers was attributable to the State of New York on the

ground that the taxpayers did not relinquish their New York domicile and since they spent more than thirty days within the State of New York they are deemed to be residents of New York for income tax purposes for the full taxable year and recomputed the additional personal income tax due from the taxpayers in the sum of $122.16 and accordingly issued a notice of deficiency therefor.

(2) That the taxpayer, Stuart A. Graham was employed as manager of the Office Machines Department, International Division, Remington Rand Division of Sperry Rand Corporation in New York City during the period from January 22, 1961 to October 14, 1961; that during the aforementioned period the taxpayers and their family lived at 2197 Post Road, Scarsdale, New York; that the taxpayer, Stuart A. Graham rented a house, unfurnished, at the aforementioned premises under a one-year lease with a cancellation clause of three months, should he be transferred abroad; that during the year 1961, the taxpayer Stuart A. Graham operated a motor vehicle registered with the Department of Motor Vehicles of the State of New York.

(3) That both of the taxpayers were born in Buffalo, New York and lived there until December 24, 1943; that the taxpayer Stuart A. Graham was employed by Remington Rand Division, Sperry Rand Corporation in Buffalo, N.Y. from 1931 to December 24, 1953; that since December, 1953, the taxpayer Stuart A. Graham has been assigned by his employer, Remington Rand Division, to work in the branch offices of said company in foreign countries from time to time and has also been re-assigned to work in the State of New York for his employer from time to time; that the taxpayers never intended to renounce their U.S. citizenship or to become nationals of a foreign country; that whenever the taxpayer Stuart A. Graham was assigned to work abroad, his family accompanied him and he also removed his furniture and furnishings to such foreign countries; that when he was re-assigned to work for his employer in this State, his family accompanied him to the State of New York and his furniture and furnishings were transported to this State; that the taxpayer Stuart A. Graham, subsequent to 1943, was employed in the State of New York during the following

periods: June 30, 1944 to January 2, 1946, February 1, 1957 to September 5, 1958 and January 22, 1961 to October 14, 1961; that the taxpayer Stuart A. Graham was employed abroad during the following periods: from January, 1946 to January, 1957 in Hawaii, from September, 1958 to January, 1961 in Rio de Janeiro, Brazil and from October, 1961 to the present in Buenos Aires, Argentina.

(4) That the taxpayers have been and still are domiciliaries of the State of New York; that the taxpayers have failed to establish that they both intended to and actually did effect any change of domicile from the State of New York to any other place; that during the year 1961, the taxpayers were domiciliaries of the State of New York and spent more than thirty (30) days within this State.

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

DETERMINES AND DECIDES:

(A) That the taxpayers were and remained domiciliaries of the State of New York during the entire year 1961 and spent more than thirty days within the State during said year; that the taxpayers, therefore, were residents of the State of New York for income tax purposes during the year 1961 in accordance with the intent and meaning of Section 605 of the Tax Law.

(B) That, accordingly, the notice of deficiency for the year 1961 is correct and is hereby sustained and that the petition of the taxpayers for redetermination of a deficiency or for refund of personal income taxes for the year 1961 be and the same is hereby dismissed.

DATED: Albany, New York, on the 6th day of January, 1966.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ IRA J. PALESTIN
Commissioner

/s/ JAMES R. MACDUFF
Commissioner