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Income Tax Determinations
Booth, Virginia M. ^{A-Z}

Commissioners Murphy and MacBeth

Solomon Sles, Hearing Officer


Virginia M. Booth

**Petition For Re-determination of A
Deficiency or For Refund of Personal
Income Taxes Under Article XI of the
Tax Law For the Years 1961, 1962 and
1963**

A formal hearing was held at the New York City Office on September 30, 1966. Apppearances and exhibits are indicated in the transcript of the minutes attached hereto. The issue involved herein is whether the taxpayer was a resident of this State, for tax purposes, during the years in issue. Determination of the issue is whether or not the taxpayer maintained a permanent place of abode in this State.

The taxpayer filed resident returns for the years 1961, 1962 and 1963 listing her address as Millbrook Farm, Pundret Center, Connecticut. Thereafter she filed timely amended returns and claims for refunds for said years contending that she was a non-resident for the years in issue and erroneously filed resident returns. A conference was held with the taxpayer and the auditors recommended refunds for said years. The Internal Tax Bureau, however, sent a letter to the taxpayer on August 8, 1966 denying her claims for refund upon the ground that "it has not been established that a permanent place of abode was not maintained in New York and that your status is as a non-resident as defined in §600 of the Tax Law." No reason was given for the reversal of the recommendation of the conferees. It appears that the Internal Tax Bureau in Albany felt that since the taxpayer had to travel 130 miles from her home in Connecticut, that she probably maintained a permanent place of abode in New York. Mr. Mulder, Tax Administrative Supervisor was assigned as the representative for the Internal Tax Bureau and appeared at the hearing.

Up to August 1959 the taxpayer lived in a rented apartment at 34 Glen Washington Road, Mountville, New York, with her husband, Robert M. Booth and their children. The South Lawrence College purchased the property and it was necessary for the tenants to vacate the premises. On August 1, 1959, the taxpayer and her family moved to Millbrook Farm, Pundret Center, Connecticut, where they

 During the years in issue the taxpayer's father-in-law. Neither the taxpayer nor her husband maintained any place of abode within the State of New York after August 1, 1959.

During the years in issue the taxpayer was employed as an executive buyer by Lord & Taylor and was required to travel outside of the State of New York. She was only required to report for work at the New York store about 2 days a week except for the Christmas and Easter Seasons. She was also required to travel to Europe and to the Lord and Taylor Stores in Millburn, New Jersey and Hartford, Connecticut. She had no scheduled time to report to the New York office. However, she would usually report at 9:30 sometimes at 10:00 A.M. She travelled by car and it took her 2 to 2 1/2 hours to get to work when it was necessary for her to report to New York. During the years in issue the taxpayer and her husband voted from Connecticut. Her buying was done mostly in England and in Ireland. The distance between Foxcroft Center and New York City is about 130 miles.

I am of the opinion that during the years in issue, the taxpayer was a domiciliary of the State of Connecticut and maintained a permanent place of abode there; that she did not maintain any permanent place of abode within the State of New York; that she was therefore a non-resident for income tax purposes in accordance with §605 of the Tax Law. Even if it be assumed, ~~supposed~~, that the taxpayer did maintain a permanent place of abode within the State of New York, the record indicates that during the years 1961, 1962 and 1963 she only spent 140, 175 and 137 days respectively so that in any event since she was a domiciliary of the State of Connecticut she could by no stretch of the imagination be considered to have a permanent place of abode for more than 183 days in order to be taxed as a resident of this state.

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

DEC 15 1966

ES:ml

(Haverly 9, 1967)

SOLOMON SIES

Hearing officer

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

of

VIRGINIA M. BOOTH

**FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEARS 1961, 1962 and 1963.**

The taxpayer, Virginia M. Booth having duly filed a Petition for Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the years 1961, 1962 and 1963, (File #67025091) and a hearing having been held in connection therewith at the Office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 29th day of September, 1966, before Solomon Sles, Hearing Officer of the Department of Taxation & Finance at which hearing the taxpayer appeared personally and testified in connection therewith and Matthew Maldow, Tax Administrative Supervisor having appeared as representative for the Income Tax Bureau and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed New York State Resident Returns for the years 1961, 1962 and 1963 in which she set forth her address as Hillendale Farms, Pomfret Center, Connecticut; that thereafter the taxpayer duly filed timely claims for refund together with amended New York State non-resident income tax returns for said years contending that the original returns were erroneously filed and that she was a non-resident during the years 1961, 1962 and 1963 and claimed a refund of income taxes paid for said years;

that on August 9, 1965, the Department of Taxation & Finance denied the taxpayer's applications for refund upon the ground that; "It has not been established that a permanent place of abode was not maintained in New York and that your status is as a non-resident as defined in §605 of the Tax Law."

(2) That prior to August 1, 1959 the taxpayer was a domiciliary of the State of New York and lived in a rented apartment at 34 Glen Washington Road, Bronxville, New York with her husband Robert H. Booth and their children; that Sarah Lawrence College purchased the property and it was necessary for the tenants to vacate the premises; that on August 1, 1959 the taxpayer effected a change of her legal domicile from the State of New York to the State of Connecticut where she and her family have continuously resided at Hillendale Farms, Pomfret Center, Connecticut; that during the years in issue, the taxpayer and her husband voted from the State of Connecticut.

(3) During the years in issue the taxpayer was employed as an executive buyer by Lord & Taylor and was required to travel outside of the State of New York; that she was only required to report for work at the New York store about 2 days a week except for the Christmas and Easter Seasons; that she was also required to travel to Europe and to the Lord and Taylor Stores in Millburn, New Jersey and Hartford, Connecticut; that she had no scheduled time to report to the New York office; that, however, she would usually report at 9:30, sometimes at 10:00 A.M.; (that the distance between Pomfret Center and New York City is about 130 miles,) that she traveled by car and it took her 2 to 2 1/2 hours to get to work when it was necessary for her to report to New York; that her buying was done mostly in England and in Ireland.

(4) That neither the taxpayer nor her husband maintained a permanent place of abode within the State of New York during the years 1961, 1962 and 1963; that during said years, the taxpayer and her husband were and remained domiciliaries of the State of Connecticut and maintained a permanent place of abode there; that the taxpayer was not a resident of the State of New York for income tax purposes during the years 1961, 1962 and 1963 within the intent and meaning of §605 of the Tax Law.

(5) That in connection with the taxpayer's amended returns and claims for the years 1961, 1962 and 1963 the taxpayer submitted schedules of days worked within and without the State of New York; that for each of the years the taxpayer included as days worked without the State of New York Saturdays, Sundays and holidays; that at a preliminary conference held with the taxpayer the conferees recommended the elimination of Saturdays, Sundays and holidays as days worked either within or without the State and found that for the year 1961 the total working days amounted to 193 days of which 53 days were days worked out of the State of New York, for the year 1962 the total working days amounted to 233 days of which 58 days were worked out of the State of New York, for the year 1963 the total working days amounted to 193 days of which 56 days were worked out of the State of New York; that on the basis of such allocation there were recommended as refunds due the taxpayer the sums of \$385.43, \$432.77 and \$244.91 for the years 1961, 1962 and 1963, respectively; that the taxpayer consented to the elimination of Saturdays, Sundays and holidays as working days and to the recommended refunds; that such recommended findings of days worked within and without of the State are correct.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

That the denial of the taxpayer's claims for a refund of New York State personal income taxes for the years 1961, 1962 and 1963, except as modified in accordance with Finding (5) above, is incorrect; that the petition for redetermination is hereby granted, in part, except as herein modified and that the sum of \$1,063.11 be refunded to the taxpayer together with any interest which may be lawfully due and owing.

AND IT IS SO ORDERED.

Dated, Albany, New York on the 12th day of January 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner