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BUREAU OF LAW  
MEMORANDUM*Income Tax Determinations*  
*A-2*  
*Kalos, Bernard M.*

TO: Commissioners Murphy, Macduff and Conlon  
FROM: Francis V. Dow, Hearing Officer  
SUBJECT: BERNARD M. KALOS

1959 Assessment ANFA-98811  
Application for Revision or  
Refund

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York, New York for November 14, 1966 and on June 20, 1967. The taxpayer defaulted in appearance on both occasions.

The question involved herein is whether the taxpayer was a resident of New York under the definition contained in section 350, subdivision 7 of the Tax Law. An assessment was issued (Assessment #ANFA-98811) based on a field audit finding that the taxpayer was taxable as a resident of New York during the year 1959. The taxpayer claims that he is not taxable as a resident during 1959, alleging that he had no permanent place of abode in New York State and did not spend in the aggregate more than thirty days within the State, and that his domicile was in Greece at his mother's home.

The taxpayer, a Greek citizen, first came to the United States in 1952 as a student. He went back to Greece in 1954. In July 1955 he returned to this country under an immigration quota and rented a one-room furnished apartment in New York City which he kept until July 1957 when he, as an engineer was sent on an assignment presumably outside the State, by his employer, Panagoulous & Associates, Inc. of New York, New York. This assignment continued until January 1958 when the taxpayer returned to New York City. He stayed there until April 1958 when he went to Palermo, Italy where he married his wife. She is an Italian citizen. The taxpayer then returned to New York City in July 1958 and leased an unfurnished apartment for three years. Upon his being given an assignment in Japan, he cancelled his lease and sold his furniture. The taxpayer and his wife arrived in Japan in October 1958. He leased a house at Kobe, Japan and purchased new furniture.

During 1959 the taxpayer wishing his child to be born an American citizen he returned with his wife from Japan to New York on November 12, 1959 so that the baby could be born in this country. He was given temporary assignments by his employer in Montreal, Canada, San Pedro, California and Norfolk, Virginia and spent only 27 days in New York State. However, he subleased an apartment in New York City for a period of seven months. At the end of the

sublease he entered into a three-year lease. The taxpayer filed a Federal income tax return for the year 1959 in which he reported his entire income for the year.

I am of the opinion that the taxpayer was taxable as a New York resident for the year 1959 within the intent and meaning of section 350, subdivision 7 of the Tax Law. The taxpayer changed his domicile from Greece to New York State when he moved to this country in July 1955 under the immigration quota. The taxpayer did not show that he changed his domicile from New York State to any other place subsequent to July 1955. The taxpayer did not maintain a permanent place of abode anywhere outside New York State after he returned to the United States on November 12, 1959. Accordingly, it is not necessary to determine if the taxpayer maintained a permanent place of abode in Japan, nor to determine if he maintained a permanent place of abode in New York State during 1959. The State Tax Commission has consistently held that the exception to the definition in the word "resident" in section 350, subdivision 7 of the Tax Law was never intended to apply to persons domiciled in this State who did not maintain a permanent place of abode without the State throughout the entire taxable year.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter denying the taxpayer's application be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW  
Hearing Officer

July 21, 1967

FVD:pg

Enc.

7-24-67

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION  
OF**

**BERNARD M. HALOS**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF  
THE TAX LAW FOR THE YEAR 1959**

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Bernard M. Halos, the taxpayer herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959, and a hearing having been scheduled in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, for the 14th day of November, 1966 and June 20, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having defaulted in appearance at both scheduled hearings and the matter having been reviewed and considered,

**The State Tax Commission hereby finds:**

(1) That the taxpayer filed a New York State nonresident income tax return for the year 1959; that an assessment was issued for the year 1959 (Assessment # AUSA-98811) on the ground that the taxpayer was a resident and taxable on all of his income during that year.

(2) That the taxpayer is a Greek citizen who came to the United States in 1952 as a student; that in 1954 he went back to Greece; that in July 1955 the taxpayer returned to this country under an immigration quota; that the taxpayer changed his domicile from Greece to the State of New York when he entered the United States in July 1955; that the taxpayer did not thereafter abandon his New York State domicile and require a new domicile; that on his arrival in this country he rented a one-room furnished apartment in New York City which he kept until July 1957; that in July 1957

he was given an assignment as an engineer, by his employer, Panagoulous & Associates, Inc. of New York, New York, which assignment continued until January 1958 when the taxpayer returned to New York City; that he then stayed in New York until April 1958 when he went to Palermo, Italy where he married his wife who is an Italian citizen.

(3) That the taxpayer returned to New York City in July 1958 and leased an unfurnished apartment for three years; that thereafter he was given an assignment in Japan, whereupon the taxpayer cancelled his lease and sold his furniture; that the taxpayer, in or about October 1958, arrived in Japan with his wife where he rented a house during the time that he was assigned there by his employer.

(4) That on November 12, 1959 the taxpayer returned to New York City for the purpose of having his child born in the United States; that he subleased an apartment in New York City for seven months; that at the end of the sublease he entered into a three-year lease; that he was given temporary assignments by his employer on his return to this country in San Pedro, California, Norfolk, Virginia and Montreal, Canada; that the taxpayer spent 27 days in the State of New York during 1959; that the taxpayer did not maintain a permanent place of abode within New York State throughout the entire year; that the taxpayer filed a Federal income tax return for the year 1959 in which he reported his entire income for the year.

(5) That the taxpayer changed his domicile from Greece to the State of New York when he entered the United States in July 1955 under an immigration quota; that the taxpayer did not thereafter abandon his New York State domicile and acquire a new domicile; that the taxpayer continued to be a domiciliary of the State of New York during the year 1959;

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

**DETERMINES:**

(A) That the taxpayer was a resident of the State of New York for income tax purposes during the year 1959 as defined by section 350(7) of the Tax Law, and consequently was subject to a tax on his entire income earned during said year.

(B) That the assessment (Assessment # ANFA-98811) for the year 1959 is affirmed and that such assessment is correct and lawfully due and owing, together with interest and other statutory charges and does not include any other taxes or charges which are not lawfully due and owing.

Dated: Albany, New York this 9th day of August, 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**PRESIDENT**

/s/

JAMES R. MACDUFF  
**COMMISSIONER**

/s/

WALTER MACLYN CONLON  
**COMMISSIONER**