

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

Income Tax Determinations
BUREAU OF LAW

A - Z

MEMORANDUM

Frolov, Boris & Marina

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: Frolov, Boris and Marina
Application for revision or refund
of personal income tax under Article 22
of the Tax Law for the year 1961

A hearing on the above matter was held before me at 80 Centre Street, New York, New York on October 26, 1966.

The question at issue is whether the taxpayers, Boris and Marina Frolov were residents of the State of New York, for the purposes of Article 22 of the Tax Law, from March 31 to December 31, 1961.

Taxpayers formerly resided in New York City and Boris was employed by the Shell Oil Company in New York until his retirement prior to March 31, 1961. Boris was a native of Russia and a naturalized citizen of the United States. Marina was not a citizen of the United States and had children and other relatives in France.

At about the time of the husband's retirement, taxpayers purchased a residence in Sare, France to which they removed on March 31, 1961 and where they have resided since. The New York apartment was vacated and the furnishings and other possessions were sent to Sare.

Boris Frolov retained his United States citizenship.

On or before April 15, 1962 taxpayers filed a New York State resident return covering the period January 1, 1961 to March 31, 1961 and noted thereon "nonresident return not filed - no New York income during remainder of year."

The combined tax of husband and wife, as computed by them, amounted to \$238.61. Taxes had been withheld for both the husband and wife totaling \$478.69 and in addition the husband had made a payment of estimated tax of \$3,000. Refund was demanded in the amount of \$3,240.08.

The Income Tax Bureau queried the taxpayer whether (1) change of residency was of a permanent nature, (2) taxpayer was a United States citizen and (3) United States citizenship was

being retained. Upon his affirmative reply to all three questions, a voucher for income tax refund was issued stating that "As you are retaining your United States citizenship and did not enter France as an immigrant you are considered a New York State resident for the full year." The tax was recomputed by the Bureau on the basis of full year residence and a refund of only \$649.46 was authorized.

Income Tax Regulations, Article 502 states, in part, that:

"To constitute a change, there must be intent to change, actual removal, and a new abode."

All of these appear to be present in this case.

In a statement of policy dated November 30, 1959, the Income Tax Bureau stated, in part, that:

"A New York domiciliary who moves, with his family and effects, to another country, because of assignment there by his employer or for study or research in such country, etc., is considered as having retained his New York domicile, unless he furnishes satisfactory evidence that he entered such country with the intention of residing there permanently."

Taxpayer did not remove for business or study but for retirement. The permanence has been demonstrated by his purchase of a home in France and continued residence there, near his wife's family. Based upon the foregoing, it is my opinion that the taxpayer abandoned his domicile in New York March 31, 1961.

The assessment was based upon the amount of \$49,442.19 (\$39,727.02) reported as a subtraction from the total reported for Federal purposes as capital gain. The amount represents a lump sum distribution to taxpayer of his rights in Shell Provident Fund and Sterling Provident Fund A. These funds were previously considered by the State Tax Commission and it was determined that taxability is determined by residence at the time of distribution. (JHM letters to Shell Oil Company, May 4, 1961 and April 16, 1962).

Since the taxpayer was not a resident of New York at the time, no part of the distribution is subject to New York State income tax. I recommend that the decision of the State Tax Commission cancelling the assessment and granting the refund be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX
Hearing Officer

VPM:kon

Enc.

September 17, 1968

STATE OF NEW YORK
STATE TAX COMMISSION

.....
IN THE MATTER OF THE APPLICATION

OF

BORIS AND MARINA PROLOV

FOR REVISION OR REFUND OF PERSONAL
INCOME TAX UNDER ARTICLE 22 OF THE
TAX LAW FOR THE YEAR 1961
.....

The taxpayers, Boris and Marina Prolov, having filed an application for revision or refund of personal income tax for the year 1961 and a hearing having been held thereon at the office of the State Tax Commission, 60 Centre Street, New York, New York, on the 26th day of October, 1966, before Vincent P. Molinsaux, Hearing Officer of the Department of Taxation and Finance and the record having been duly examined and considered

The State Tax Commission hereby finds:

(1) That the taxpayers filed a New York State resident return for the period January 1, 1961 to March 31, 1961 and noted thereon "nonresident return not filed - no New York income during remainder of year".

(2) That taxes withheld for the taxpayers totaled \$478.69 in addition to which taxpayers paid \$3,000 on account of estimated tax; that the tax as computed on the return amounted to \$238.61 leaving a claimed refund due of \$3,210.00.

(3) That on the ground that taxpayers were residents of the State of New York for the entire year 1961 the Income Tax Bureau recomputed the tax at \$2,829.23 and issued a refund of only \$649.46.

(4) That taxpayers resided in New York City where the husband was employed by the Shell Oil Company until his retirement just prior to March 31, 1961; that Boris was a native of Russia and a naturalized citizen of the United States; that Marina was not a citizen of the United States and had children and other relatives in France.

(5) That at about the time of the husband's retirement taxpayers purchased a residence in Sare, France to which they removed on March 31, 1961 and where they have resided since.

(6) That the New York apartment was vacated and all furnishings and other possessions were sent to Sare.

(7) That Boris Frelov retained his United States citizenship.

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

DECIDES:

(A) That taxpayers abandoned their domicile in New York March 31, 1961.

(B) That taxpayers were residents of New York for only the period January 1 to March 31 in the year 1961.

(C) That the recomputation of tax for the year 1961, File No. 1-8597356 is incorrect and is canceled in full.

-3-

(D) That taxpayers be paid the balance of \$2,590.62 still unpaid on the claimed refund of \$2,829.23).

DATED: Albany, New York this 23rd day of September, 1964.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

COMMISSIONER