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State Tax Commission

Ira J. Palestin

Gerd M.H. Leven

Formal Hearing on Petition for Redetermination
and Refund of Personal Income Tax for year 1962

By petition sworn to November 21, 1966 this taxpayer prayed for redetermination and refund of a deficiency in the sum of \$89.73 for tax year 1962. The ground of his petition is that during the course of the year he changed his "status", i.e. his residence, "and I therefore claim that I am only liable for Tax incurred by me before April 7, 1962."

A formal hearing on his petition was held April 24, 1967 at 80 Centre Street, New York, N.Y. before April 24, 1967 at 80 Centre Street, New York, N.Y. before Ira J. Palestin as Hearing Officer. Taxpayer Gerd M.H. Leven appeared and testified thereat.

The testimony shows that during calendar year 1962 taxpayer resided with his wife and family at 652 West 189th Street, New York, N.Y. at which premises he had continuously resided beginning and since 1948 (s.m.4). On or about April 6, 1962, his employer transferred taxpayer from their New York office to their plant in Mercersburg, Pa., where taxpayer was appointed an executive in charge of his employer's commercial office. Taxpayer did not give up the apartment he and his family occupied in Manhattan; he took a room in a six-room house in Mercersburg, Pa. owned by his employer, Loewengart Co., Inc. In this house, rooms were occupied by individuals who were their executive employees of Loewengart Co. Taxpayer shared a room with one of his fellow employees (s.m.3-5).

As an employee of Loewengart Co., Inc. taxpayer worked at their Mercersburg plant from Monday morning to Friday evening of the week, sometimes to Saturday. At the end of his work week he returned to New York "to be with my family" (s.m.6-7). Taxpayer's family never interrupted their occupancy of the apartment at 652 West 189th Street New York, N.Y. His children kept going to public schools

his New York apartment. He paid no rent for the use of his room in his employer's house in Mercersburg. In New York he continued the telephone listed in his name in his apartment at 652 West 189th Street (s.m. 7-9).

Clearly taxpayer continued a resident of New York maintaining a permanent place of abode here. See §603, Tax Law and Article 501(a) Income Tax Regulations. See also determinations by the State Tax Commission in Matter of Frazier dated June 28, 1966, and Matter of Gornick dated January 31, 1967.

This memorandum accompanies a proposed determination in form denying the instant taxpayer's application for re-determination and refund.



Ira J. Palestin

Dated: January 31, 1968

OK ms 2-29-68
AA

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

GERD M. H. LEVEN

FOR A REDETERMINATION OF DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEAR 1962.

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The taxpayer, Gerd M. H. Leven, having duly filed a petition for redetermination and refund of a deficiency of personal income taxes for the year 1962 (File No. 2-8607435), and a formal hearing having been held at the office of the State Tax Commission, State Office Building, 80 Centre Street, New York, N.Y. on April 24, 1967, at 3:30 P.M. before Ira J. Palestin, Hearing Officer, and Gerd M. H. Leven having appeared and testified at the said hearing and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Taxpayer, Gerd M. H. Leven, in the joint names of himself and his wife, Greta R. Leven, filed with the Department of Taxation and Finance an unsigned New York State income tax resident joint return (IT-201) for the year 1962, in which he reported total income for such year in the sum of \$8170.16. With this return he sent a letter to Income Tax Bureau dated April 12, 1963, followed by his letter to Income Tax Bureau dated May 8, 1963, in which letters he stated that he moved on April 7, 1962

from New York, N.Y. to Mercersburg, Pennsylvania, and that his family continued to reside at his New York address and that he did not understand he was required to pay income taxes to the State of New York "just because my family still resides there", etc.

(2) On or about April 29, 1963 Income Tax Bureau wrote taxpayer Gerd M. H. Leven at his address, Apartment 4-E, 652 West 189th Street, New York, N.Y. to the effect that the information submitted by taxpayer indicated he maintained a permanent place of abode in New York State during 1962 and did not acquire a permanent place of abode outside New York State, in consequence of which as a resident of New York State for the entire year a remittance was requested from taxpayer in the amount of \$89.73, balance due on his New York 1962 return. On July 10th, 1963 the New York State Income Tax Bureau in Albany, New York addressed and sent to Gerd M. H. Leven and Greta R. Leven, his wife, a notice and demand for payment of income tax due for the year 1962 in the sum of \$89.73. Thereafter, on July 12, 1963 taxpayer Gerd M. H. Leven by communication dated that day sent the amount of \$89.73 to Income Tax Bureau as payment under protest.

(3) During calendar year 1962, taxpayer resided with his wife and family at 652 West 189th Street, New York, N.Y., at which premises he continuously resided beginning and since 1948. On or about April 6, 1962, pursuant to a transfer of taxpayer by his employer Loewengart Co., Inc. from the latter's New York office to their plant in Mercersburg, Pennsylvania, taxpayer moved to a house at 116 Linden Avenue, Mercersburg, Pennsylvania, owned

by his said employer and occupied by various of its employees. Taxpayer shared a room in the said house, furnished by his employer, with a fellow-employee. During all of 1962, and to the time of the hearing herein, taxpayer and his family continued to reside at their aforesaid New York apartment, to which taxpayer returned upon completion of a week's employment in Mercersburg, Pennsylvania, so that he could be there over the week-end with his family (s.m. 7), taxpayer paying and continuing to pay the rent for his said New York apartment. He paid no rent for the room he occupied in Mercersburg, Pennsylvania (s.m. 9).

(8) Taxpayer maintained a telephone in his New York apartment listed in his own name (s.m.9), voted in the New York elections in and since 1962 (s.m.9), and did not vote in Pennsylvania elections (s.m.11).

(9) During the year 1962, taxpayer was a domiciliary of the State of New York maintaining a permanent place of abode at 652 West 139th Street, New York, N.Y.

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

DECIDES

(A) By virtue of the fact recited in paragraph (9) above, taxpayer was a resident of New York during 1962.

(B) The notice and demand for payment of resident income taxes for the year 1962 in the sum of \$39.73 computed upon income reported on the aforesaid unsigned IT 201 form submitted in the joint name of Gerd M. H. and Grete R. Leven correctly states said taxpayers'

income tax liability for the year 1962; that the same was lawfully due and owing, and that the petition for re-determination of deficiency and refund of payment in such amount is hereby denied.

Dated. Albany, New York, this 14th day of March 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

A. BRUCE MANLEY

Commissioner

/s/

SAMUEL E. LEPLER

Commissioner