

STATE OF NEW YORK
STATE TAX COMMISSION

Wuerthele
Ernest A. & Ruth L.
Art. 22 - Pur. Inc.

In the Matter of the Petition

of

Ernest A. & Ruth L. Wuerthele

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of May , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Ernest A. & Ruth L. Wuerthele (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ernest A. & Ruth L. Wuerthele
10 Creek End
Ensworth, Hampshire, England

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

3rd day of May , 19 71

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Ernest A. & Ruth L. Wuerthele

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of April , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Ernest A. & Ruth L. Wuerthele (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ernest A. & Ruth L. Wuerthele
10 Creek End
Emsworth, Hants, England

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

21st day of April , 1971.

Linda Wilson

Martha Funaro

STATE TAX COMMISSION

3. The deficiency is computed on the taxpayers income from the entire year including salary received in England. The total tax due is computed to be \$1,696.94 and the amount of \$553.91 shown to be due on the taxpayer's return is subtracted to arrive at a deficiency of \$1,143.13. Interest on this is computed to be \$89.76 and a credit is granted for \$212.70 being the amount by which taxes withheld exceeded the amount due shown on taxpayer's return. The net amount shown to be

due is thus, \$1,020.19.

4. Mr. Wuerthele is a citizen of the United States.

5. From 1958 to June 1967 taxpayers resided at Hillandale Road, Port Chester, New York.

6. Mr. Wuerthele was employed for many years by the IBM Systems Manufacturing Division of IBM.

7. As of April 1, 1967, Mr. Wuerthele's employment was transferred to IBM World Trade Corporation at 821 United Nations Plaza, New York City. Mr. Wuerthele was appointed Manager of the Harant Plant of IBM United Kingdom Limited, a subsidiary of IBM World Trade Corporation. The plant is located in Harrant, Hampshire, England. He began work there in July 1967.

8. Taxpayer visited England in 1967 from March 3 to March 10, from April 10 to April 19, and from May 14 to June 9. On July 4, 1967, taxpayer arrived in England and took up residence at Number 10, Creek End, Ensworth, Hampshire, England which was leased on a yearly bases.

9. Mr. Wuerthele remains working and living in England as of 1970. Since 1967 he has visited the United States on at least three ocassion: December 21, 1968, to January 5, 1969 from April 19, 1969 to May 2, 1969 and from December 19, 1969 to December 31, 1969.

10. Taxpayer sold his car and boat and moved his other personal possessions to England in June 1967. It does not appear whether I.B.M. paid for the moving expenses.

11. As of September 1, 1967 the Port Chester house was rented at \$450 a month.

12. The taxpayers sent their child to a local English school, joined a local sailing club and took part in social activities.

13. The taxpayer stated in a letter (August 17, 1968) that "no specific duration has been stated for my work in England; estimates of its probable duration being four years." The taxpayer later stated

that the four year estimate was because he intended to retire after four years.

14. Taxpayer entered England on a Ministry of Labour work permit which is valid for one year but which will routinely be renewed.

15. Mr. Wuerthele made a statement on a Federal Form 2350 that the date of his expected return to the United States was "indefinite, but not before September 1969". The date mentioned was sufficiently remote to qualify him for all relevant Federal Tax benefits.

16. The taxpayer is subject to United Kingdom income tax on his salary earned in England as a person "resident" and "ordinarily resident" in England. Mr. Wuerthele signed a printed declaration on his British income tax return that he was "not domiciled in" the United Kingdom. This statement was intended to be interpreted according to English Law and is not necessarily relevant under New York Law.

17. Taxpayer claimed a credit against Federal Taxes as provided by I.R.C. Section 91. He computed this credit on the basis of being "physically present" in England for 245 days from May 1. He claimed also to be a "bona fide resident" of England from May 14 for a total of 231 days.

18. Mr. Wuerthele received as compensation the following amounts: \$8,750.10 from IBM in Armonk, New York; \$3,125.00 from IBM World Trade Corporation in New York on which taxes were withheld; and \$27,725.02 from IBM World Trade Corporation on which taxes were not withheld, for a total of \$39,600.12. He excluded from his Federal Income Tax under I.R.C. Section 911 the sum of \$13,424.66. This was computed as the maximum deduction allowed in taxpayer's circumstances. Rents received from his Port Chester home were reported but after expenses a net loss resulted from this source. The net amount reported on his Federal Income Tax return was \$26,175.46.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission hereby,

DECIDES:

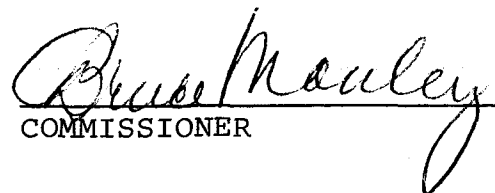
A. The taxpayer has not shown that he changed his domicile in 1967; in particular, although he went abroad to work until retirement he has failed to show that he did not intend to return to New York after retirement.

B. The petition is denied and the deficiency is sustained together with such interest, if any, as may be due pursuant to the Tax Law.

DATED: Albany, New York
April 21, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226

Ernest A. & Ruth L. Wuerthele
10 Creek End
Ensworth, Hants, England

CERTIFIED

No. 592050

MAIL