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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES L. AND DOROTHY R. CLAPP

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) 1962 and 1963:

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 2nd day of January, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon CHARLES L. AND DOROTHY R. CLAPP (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles L. and Dorothy R. Clapp  
Room 2615, 2 Broadway  
New York, New York 10004  
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

2nd day of January, 1973

Lynn M. Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES L. AND DOROTHY R. CLAPP

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
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Tax Law for the (Year(s) 1962 and 1963:

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 2nd day of January , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon WILLARD B. TAYLOR,  
ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Willard B. Taylor, Esq.

c/o Sullivan & Cromwell

48 Wall Street

New York, New York 10005

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

2nd day of January , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
January 2, 1973

Charles L. and Dorothy R. Clapp  
Room 2615, 2 Broadway  
New York, New York 10004

Dear Mr. and Mrs. Clapp:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CHARLES L. AND DOROTHY R. CLAPP	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1962 and 1963.	:	

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Charles L. and Dorothy R. Clapp filed a petition pursuant to section 689 of the Tax Law for the redetermination of a deficiency of personal income taxes imposed by Article 22 of the Tax Law for the years 1962 and 1963. A hearing was duly held before Nigel G. Wright, Hearing Officer, on May 6, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, with the petitioners represented by Willard B. Taylor, Esq., of Sullivan and Cromwell and the Income Tax Bureau represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The sole issue in this case is whether the domicile of taxpayers was changed prior to 1962 and 1963 by reason of having moved from New York to Santiago, Chile, in connection with a change in assignment by Mr. Clapp's business firm.

FINDINGS OF FACT

1. Charles Clapp was born in Springfield, Massachusetts. From 1933 to 1943, he lived and worked in New York City. He went to the Rochester area in 1943. From 1948 to April of 1961, he and his wife owned a house at 663 Lake Road, Webster, New York, a suburb of Rochester, New York. From 1946 to 1956, he practiced accounting in

Rochester in his own firm. The firm was merged with Haskins and Sells in 1956. From 1956 to 1960, Charles Clapp was partner-in-charge of the Rochester office of Haskins and Sells.

2. Haskins and Sells is an accounting firm with executive offices at 2 Broadway, New York City, and 60 offices in the United States, 72 affiliated firms outside the United States and 38 corresponding firms. Mr. John Queenan was managing partner and J. Harry Williams was coordinating partner for international operations in 1962 and 1963. The firm operates in Latin America in association with an English firm of chartered accountants, Deloitte, Plender, Griffiths & Company. Together, they had 13 offices in Latin America.

3. In December of 1959 and March of 1960, John Queenan, managing partner of Haskins and Sells spoke to Mr. Clapp about a South American assignment as partner in charge of the Santiago office and coordinating partner for Latin American affairs. On September 17, 1960, Mr. Clapp was assigned officially to the Executive offices of the Haskins and Sells in New York City. Sometime thereafter, his position in Rochester was filled. At the end of September, 1960, Mr. Clapp went to Arizona for a language course and then took a trip around South America returning on December 15, 1960.

4. Mr. Clapp went to Chile in February, 1961, to begin his assignment. His wife visited him in March and returned for a short visit in June. In October, 1961, he and his wife moved to Chile. The firm paid the expenses of his move to Chile (and later of his move back). In October, 1961, Mr. Clapp sold and disposed of his house in Webster, New York, its furnishings and his cars.

5. Mr. Clapp held a temporary visa for his first two years in Chile and a permanent visa thereafter. The temporary visa did not restrict his activities and it was the only type of visa he could get at the time. Mr. and Mrs. Clapp retained their United States citizenship at all times.

6. In October, 1961, Mr. and Mrs. Clapp moved into the Hotel Carrera in Santiago and later in the fall subleased a condominium. In July, 1962, taxpayer rented a single family house with the idea of purchase. Later, the owner would not sell. Taxpayers furnished this house with their own furnishings. In September, 1962, Mr. Clapp confirmed that his assignment was permanent and decided to buy a house. Before this date, Mr. Clapp had doubts about the permanence of the assignment. Mr. Clapp's wife had a brother and sister living in Webster, New York. Mr. Clapp's mother was in a nursing home in Rochester from 1961 through 1964 when she died. Mr. Clapp's older son was in school until 1961 and then went to work in Cleveland and into the Army for six months. His younger son, William was attending college in Iowa and Utica, New York, in 1961 and 1962. Mr. Clapp's sons paid visits to him in Chile in each year of 1961, 1962 and 1963. Mr. Clapp made a will in 1959, but did not change it when he went to South America. He had a bank account in Rochester and had a loan from the same bank against securities as collateral. He had a checking account in the First National City Bank in New York City. These were used for payments to American creditors.

7. Both Mr. and Mrs. Clapp spoke some Spanish. They paid Chilean income taxes. They joined churches and clubs in Santiago. Mr. Clapp did not vote in any elections during 1962 and 1963. Taxpayers 1962 income tax return filed on January 21, 1963 asserted a Chilean domicile.

8. During 1962 and 1963 Mr. Clapp spent 55 and 100 days respectively, in New York State. He stayed usually at the Hotel Sheraton Russell. His vacations were in the Caribbean. His visits to New York were primarily for business reasons. He did visit Rochester for periods of two or three days on several occasions but not for more than seven days in any single year.

9. The taxpayer asserts that the Santiago assignment was intended to be of indefinite durations. The firm does not give contracts. Relocations can be to any office of the firm and not necessarily to an office in which the person has previously served. In March of 1964, Mr. Clapp accepted the position of partner in charge of international operations in New York City to succeed Mr. Williams, who was retiring. Mr. Clapp returned to New York on December 18, 1964.

10. The deficiencies asserted are \$2,155.04 for 1962 and \$1,623.53 for 1963 both with interest.

CONCLUSIONS OF LAW

A. The taxpayer has not sustained the burden of proof as to his alleged change of domicile.

B. The petition is denied and the deficiency is affirmed together with such interest as may be due under the Tax Law.

DATED: Albany, New York  
January 22, 1973

STATE TAX COMMISSION

  
COMMISSIONER

COMMISSIONER

  
COMMISSIONER