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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD FUNK & ELIZABETH FUNK

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) 1968

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 15th day of February , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Howard & Elizabeth Funk (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard & Elizabeth Funk
23 Les Engoulevents
Domain de St. Francois D'Assise
78 Celle St. Cloud, France
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

15th day of February , 1973

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of February , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip H. Weissman,
C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Philip H. Weissman, C.P.A.
666 Fifth Avenue
New York, New York 10019

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

15th day of February , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 15, 1973

**Howard & Elisabeth Funk
23 Les Engoulevents
Domaine de St. Francois D'Assise
78 Celle St. Cloud, France**

Dear Mr. & Mrs. Funk:

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

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HOWARD FUNK and	:	
ELIZABETH FUNK	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1968.	:	

Petitioners, Howard Funk and Elizabeth Funk, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 8-29267724). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on November 17, 1972 at 9:00 A.M. Petitioners appeared by Philip H. Weissman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of Counsel)..

ISSUE

Were petitioners, Howard Funk and Elizabeth Funk, resident individuals of New York State during the period from February 19, 1968 to December 31, 1968?

FINDINGS OF FACT

1. Petitioners, Howard Funk and Elizabeth Funk filed a New York State nonresident income tax return for the year 1968. They stated on said return that they were residents of New York State from January 1, 1968 to February 18, 1968. They listed their home address as 23 Les Engoulevents, Domain de St. Francois D'Assise, 78 La Celle,

St. Cloud, France. They reported that they had no New York State earnings after February 18, 1968.

2. On May 25, 1970 the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Howard Funk and Elizabeth Funk, imposing New York State personal income tax upon all of their income reportable for Federal income tax purposes for the year 1968 upon the grounds that they did not permanently change their domicile during said year. It stated, "You would also be exempt provided you were exempt for Federal Income Tax purposes. Such exemption is generally had by the filing of Federal Form 2555 (Exemption of income earned abroad by a U.S. Citizen)." In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$886.75.

3. Petitioner, Howard Funk, was employed by I.B.M. World Trade Corporation during the year 1968. In said year he received an assignment in France for a minimum period of two years. His assignment was subsequently extended to the summer of 1972. He and his wife sold their residence in New York State and left for France on February 19, 1968.

4. Petitioner, Elizabeth Funk, was born in Holland. She had relatives in Europe.

5. Petitioners, Howard Funk and Elizabeth Funk, spent more than 30 days in New York State during the year 1968.

6. Petitioners, Howard Funk and Elizabeth Funk, failed to submit any documentary or other substantial evidence to prove that they changed their domicile from New York to France on February 19, 1968.

7. Petitioners, Howard Funk and Elizabeth Funk, filed Internal Revenue Service form 2555 "Statement to Support Exemption of Income

Earned Abroad" for the year 1968. As a result of their claiming this exemption their total amount of income for Federal income tax purposes was \$20,031.98, as they were allowed to exclude from income, pursuant to section 911 of the Internal Revenue Code, a portion of petitioner, Howard Funk's salary income earned abroad totaling \$17,315.00. The amount of New York State personal income tax due was computed in the Statement of Audit Changes based upon the amount of income reported for Federal income tax purposes which was the sum of \$20,031.98.

CONCLUSIONS OF LAW

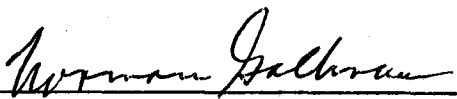
A. That petitioners, Howard Funk and Elizabeth Funk, were resident individuals of New York State during the entire year 1968 in accordance with the meaning and intent of section 605(a)(1) of the Tax Law since they were domiciled in and spent more than thirty days in New York State during said year.

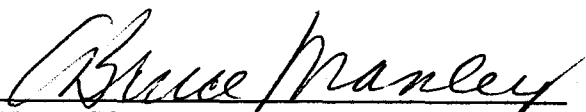
B. That the Statement of Audit Changes gave petitioners, Howard Funk and Elizabeth Funk, an allowance for the maximum exemption of income earned abroad during the year 1968 as provided for by section 911 of the Internal Revenue Code.

C. That the petition of Howard Funk and Elizabeth Funk is denied and the Notice of Deficiency issued May 25, 1970, is sustained.

DATED: Albany, New York
February 15, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER