

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| MICHAEL D. LANG AND SUSAN LANG | : | DECISION |
| for Redetermination of a Deficiency or for | : | DTA No. 810804 |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1988. | : | |

Petitioners Michael D. Lang and Susan Lang, 94 Gauguin Court, Middle Island, New York 11953-2002, filed an exception to the determination of the Administrative Law Judge issued on March 4, 1993. Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence Newman, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in response. Petitioners were given until April 30, 1993 to respond, which date began the six-month period for the issuance of this decision. Oral argument, requested by petitioners, was denied.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal. Commissioner Dugan concurs.

ISSUES

- I. Whether petitioners' wage income was subject to New York State personal income tax.
- II. Whether the Division's imposition of penalty under Tax Law § 685(q) for the filing of a frivolous tax return was proper.
- III. Whether the Division of Taxation's request for the imposition of a frivolous petition penalty under section 2018 of the Tax Law was proper.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On April 23, 1990, the Division of Taxation ("Division") issued to petitioners, Michael D. Lang and Susan Lang, a Notice of Deficiency which asserted \$831.00 in additional personal income tax due, plus interest and penalties, for the year 1988.

Petitioners, husband and wife, timely filed a joint New York State Resident Income Tax Return (Form IT-201) for the year 1988. On Line 1 of said return ("Wages, salaries, tips, etc.") petitioners wrote "Non-privileged [sic] non-taxable" and "0" in the space available for reporting the amount of such wages. Petitioners reported zero tax due on the return and claimed a refund of \$1,356.00 which amount equalled New York State income tax withheld by petitioners' employers during 1988 as indicated by wage and tax statements (Form W-2) attached to the return. These W-2's also indicated total wage income for petitioners of \$44,531.91.

By a Statement of Proposed Audit Changes dated March 12, 1990 the Division advised petitioners of the proposed income tax assessment of \$831.00 and the computation thereof and also advised of the Division's assertion of negligence penalties pursuant to Tax Law § 685(a)(1) and (2) and a penalty for the filing of a frivolous tax return pursuant to Tax Law § 685(q).

Petitioner Michael D. Lang was born in Queens, New York. Petitioner Susan Lang was born in Huntington, New York. During 1988, petitioner Michael D. Lang was employed by Cortronics Corporation and MFM Technology, Inc., both located in Ronkonkoma, New York. Petitioner Susan Lang was employed by National Health Laboratories, Inc. in Plainview, New York in 1988. During 1988, petitioners lived at their current address in Middle Island, New York.

OPINION

In the determination below, the Administrative Law Judge held that petitioners' position is without merit and that petitioners' wage income was properly subject to both Federal and New York State personal income tax. The Administrative Law Judge also upheld the imposition of penalty pursuant to Tax Law § 685(q) (i.e., for a frivolous tax return) and concluded that the record contains no evidence of reasonable cause which would warrant abatement of penalty imposed under Tax Law § 685(b)(1) and (2) (i.e., for negligence or intentional disregard for Article 22 of the Tax Law). Therefore, the Administrative Law Judge denied petitioners' petition and sustained the Notice of Deficiency dated April 23, 1990.

On exception, petitioners argue that the Administrative Law Judge, by his conclusion that New York State is part of the United States of America and that the 14th Amendment to the Constitution makes all persons citizens of the United States, misinterpreted the meaning of the term United States and the 14th Amendment and, therefore, has erroneously applied the latter to petitioners. Petitioners further argue that this conclusion is frightening to all Americans, to say the least, for it rocks the very foundation upon which this nation was formed.

Petitioners further argue that: 1) the Administrative Law Judge "does not provide any law or cites to substantiate his obvious erroneous opinion that New York has ceded its sovereignty by claiming the petitioners were born in that 'United States'" (Petitioner's brief, p. 3); 2) the Administrative Law Judge, in claiming petitioners were born in the United States, denies them their birthright status of nationals of New York State and arbitrarily changes their status to a foreign status, that of being born in a foreign jurisdiction to New York State; 3) as petitioners were not born or naturalized within the jurisdiction of the Federal government, they are not citizens of the United States; 4) there are two jurisdictions and two citizenships within America and petitioners claim that they are not citizens of the "United States" and are not subject to the jurisdiction, nor made liable to a Federal income tax; 5) by definition they are not United States citizens, but are aliens to the United States and by being born and residing within the State of New York in the town of Middle Island, they are not residing within the United

States; 6) for Federal taxation purposes petitioners are nonresident aliens; 7) since the employers of petitioners were not in themselves subject to Federal jurisdiction, nor were they a United States business operating on New York soil, they cannot be considered as a United States trade or business; thus, the income received in the form of wages is not subject to Federal taxation and uniformly excluded from state taxation; and 8) the status of petitioners has been adequately described and it should be self-evident that the status of "national of New York State" is true and accurate.

The Division submitted a letter in response and accepted as its own the reasoning contained in the determination of the Administrative Law Judge, offering it in rebuttal to the exception and accompanying brief filed by petitioners. Further, the Division moved for the imposition of a \$500.00 penalty pursuant to Article 40, section 2018 of the Tax Law. The Division argues that petitioners have commenced and maintained a proceeding in the Division of Tax Appeals based upon a frivolous petition. It is the belief of the Division that the actions of petitioners in initially filing a tax return containing frivolous assertions and the subsequent petitioning and filing of an exception have placed an undue burden upon the resources of the Division of Tax Appeals and the Tax Appeals Tribunal, and that this burden and cost fully justify the imposition of this additional penalty.

We will first address the Division's request, for the first and only time in their letter of response to the exception and accompanying brief of petitioners, to impose a \$500.00 frivolous petition penalty.

Article 40, section 2018 of the Tax Law and section 3000.15 of the Tax Appeals Tribunal Rules of Practice and Procedure allow, on the motion of the Law Bureau, a penalty of not more than \$500.00 to be imposed for the filing of a frivolous petition. However, in the case at hand, the Division has not made a motion as required by the law and regulations, but has only raised this issue in its letter in opposition to the exception. We reject the Division's request due to the failure to follow the proper procedure required by section 3000.5 of the Rules of Practice and Procedure of the Tax Appeals Tribunal relating to Motion Practice.

Further, we find no basis in the record before us for modifying the determination of the Administrative Law Judge in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners Michael D. Lang and Susan Lang is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Michael D. Lang and Susan Lang is denied; and
4. The Notice of Deficiency, dated April 23, 1990, is sustained.

DATED: Troy, New York
July 8, 1993

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner