

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
William & Cornelia Greenspan :

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1971 & 1972. :

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon William & Cornelia Greenspan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

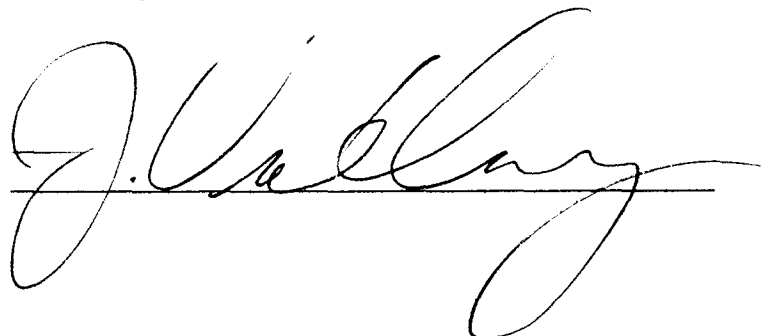
William & Cornelia Greenspan  
c/o Center for Management Technology, Inc.  
59 E. 54th St.  
New York, NY 10022

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 Postal Service within the State of New York.

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

Sworn to before me this  
17th day of October, 1980.

Deborah A. Bank

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William & Cornelia Greenspan :  
for Redetermination of a Deficiency or a Revision :  
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Personal Income Tax :  
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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Jerome R. Rosenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

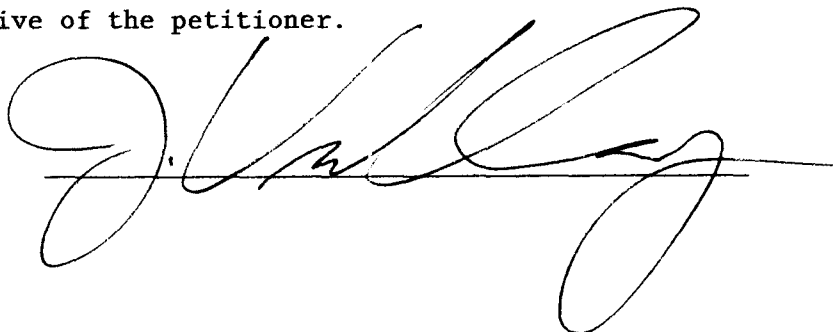
Mr. Jerome R. Rosenberg  
50 Park Ave.  
New York, NY 10016

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the 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  
17th day of October, 1980.

Dorothy A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 17, 1980

William & Cornelia Greenspan  
c/o Center for Management Technology, Inc.  
59 E. 54th St.  
New York, NY 10022

Dear Mr. & Mrs. Greenspan:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jerome R. Rosenberg  
50 Park Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
WILLIAM GREENSPAN and CORNELIA GREENSPAN : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the years 1971 and 1972. :

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Petitioners, William Greenspan and Corneila Greenspan, c/o Center for Management Technology, Inc., 59 East 54th Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 14492).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 15, 1978, at 10:45 A.M. Petitioner appeared by Jerome R. Rosenberg, Esq. the Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether petitioners were resident individuals of New York for tax purposes for the years 1971 and 1972.

#### FINDINGS OF FACT

1. Petitioners, William Greenspan and Cornelia Greenspan, timely filed New York State Combined Income Tax Returns for 1971 and 1972, on form IT-209 for nonresidents, for 1971 and on form IT-208, for residents for 1972. On the 1972 return, petitioners stated they were residents of New York State from July 1, 1972 for the balance of the year.

2. On February 4, 1974, a Statement of Audit Changes was sent to petitioners stating that they "...failed to meet the qualifications required to be considered a nonresident taxpayer." The Statement of Audit Changes showed a recalculation of income taxes due from petitioners as resident taxpayers amounting to \$7,219.75.

3. On February 13, 1975, petitioners executed a consent extending the period within which assessment of personal income tax could be made for 1971 to and including April 15, 1976.

4. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioners asserting personal income taxes due as follows:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1971	\$4,071.44	\$ 923.40	\$4,994.84
1972	<u>3,148.31</u>	<u>657.24</u>	<u>3,805.55</u>
TOTAL	<u>\$7,219.75</u>	<u>\$1,580.64</u>	<u>\$8,800.39</u>

5. Petitioner William Greenspan was co-owner of a management consulting corporation, Center for Management Technology, Inc. which he helped organize in 1965. In 1969 the firm began an enlargement of its operations with the Louis Dreyfus Organization, said to be a major world - wide agricultural products trading company, the headquarters of which are located in Paris, France. Petitioner became involved in depth with the operations of the Dreyfus Organization at the Paris headquarters and in December, 1970 decided to go to work there for an indefinite period. Petitioner took his wife and child and rented an apartment in Paris. Petitioner averred that both he and his wife were fluent in French and he intended to stay with the Dreyfus Organization and further his career. Though born in New York, petitioner claimed to be oriented toward the French people.

6. In May or June, 1972, Dreyfus decided to bring in a new management team. Petitioner William Greenspan saw his chances for success at Dreyfus diminished enormously. He returned to New York in late June, 1972.

7. While maintaining his leased apartment in Paris, petitioner William Greenspan had continued to pay rent on the New York apartment in which he had lived prior to moving abroad. Petitioner subleased the apartment for part of 1971 and in April, 1971 he purchased the apartment when the building became a co-operative. From time to time, Mr. Greenspan stayed in his apartment when business trips brought him to New York in 1971 and 1972. At other times petitioner stayed in hotels.

8. Petitioner William Greenspan reported that he spent 30 days in New York in 1971 and he moved back to New York City on July 1, 1972. His family remained in Paris from December, 1970 until July 1, 1972.

9. Petitioners filed United States income tax returns for 1971 and 1972. They claimed no credits for income taxes paid to a foreign country. Petitioner William Greenspan testified that he did not file income tax returns in France. He did not seek or obtain a working permit. Petitioners entered France on tourist passports.

10. Petitioner William Greenspan discontinued his country club membership in New York when he left in 1970. He retained his membership in the Harmony Club of New York. He retained his New York bank account and opened an account with the Paris branch of the same bank. He acquired an international driver's license.

CONCLUSIONS OF LAW

A. That the Tax Law defines "resident individual" for tax purposes. During the year at issue, a person domiciled in New York was a resident individual unless

- a) he maintained no permanent place of abode in this State,
  - b) maintained a permanent place of abode elsewhere; and
  - c) spent in the aggregate not more than thirty days of the taxable year in this State
- (Section 605(a)(1) Tax Law).

Petitioners were clearly and admittedly domiciled in New York prior to their removal to Paris in December 1970. They allege a change of domicile. A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. The burden is upon any person asserting a change of domicile to show that the necessary intent existed. While his declarations will be given due weight, it is his conduct that truly evidences intent. Where the alleged change of domicile is from one's native home to a foreign country, that intent must be shown by clear and convincing acts. (20 NYCRR 102.2(d))

Though petitioners may have left New York in 1970 with the veritable intention of not returning, they failed to sustain the burden of proof that they established a new domicile.

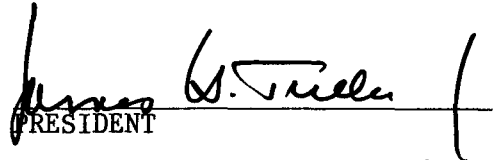
B. That being domiciled in New York and maintaining an apartment as a permanent place of abode in New York, petitioners were residents in 1971 and 1972 within the meaning and intent of section 605(a)(1) of the Tax Law and (e), 20 NYCRR 102.2).

C. That the petition of William Greenspan and Cornelia Greenspan is denied and the Notice of Deficiency dated January 26, 1976 is sustained.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER