

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Samuel R. Weltz :

AFFIDAVIT OF MAILING

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 Year :
1976.

State of New York
County of Albany

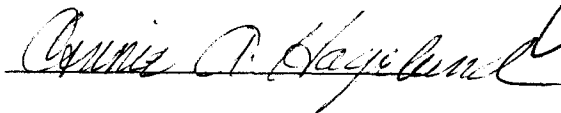
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of July, 1981, he served the within notice of Decision by certified mail upon Samuel R. Weltz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

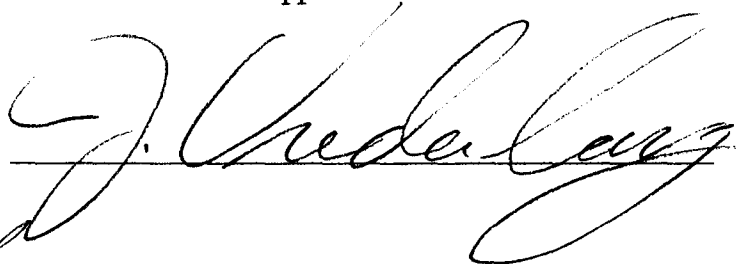
Samuel R. Weltz
907 Fifth Ave.
New York, NY 10021

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
31st day of July, 1981.


Dennis P. Hagelund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Samuel R. Weltz :

: AFFIDAVIT OF MAILING

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 Year :
1976.

State of New York
County of Albany

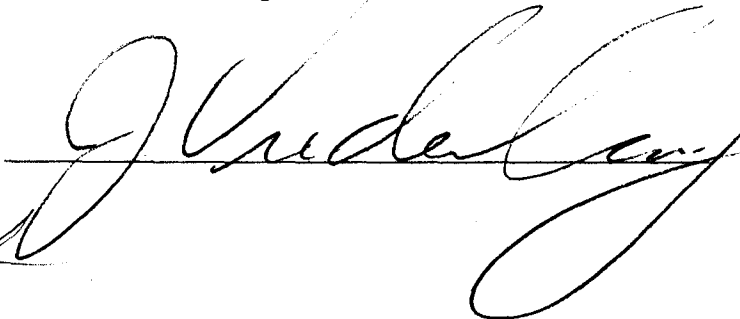
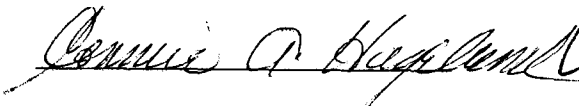
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of July, 1981, he served the within notice of Decision by certified mail upon Jack Wong the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 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 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
31st day of July, 1981.

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

July 31, 1981

Samuel R. Weltz
907 Fifth Ave.
New York, NY 10021

Dear Mr. Weltz:

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
Jack Wong
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMUEL R. WELTZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1976.	:	

Petitioner, Samuel R. Weltz, 907 Fifth Avenue, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1976 (File No. 22882).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1980 at 1:30 P.M. Petitioner appeared by Oppenheim, Appel, Dixon & Co. (Jack Wong, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

By notice of motion (upon the affidavit of Samuel Freund, Esq., sworn to July 12, 1979), the Audit Division moved to dismiss the petition pursuant to section 601 of the Rules of Practice and Procedure of the State Tax Commission (hereinafter the "Rules") on the grounds that (i) there is no material issue of fact and summary decision should be granted pursuant to section 601.10(b) of the Rules, and (ii) the petition failed to state a cause for relief under section 601.10(c)(1)(F) of the Rules. Petitioner filed answering papers to the aforesaid motion on or about July 23, 1979. The Audit Division withdrew the aforesaid motion prior to the hearing in this proceeding and did not renew said motion upon the hearing.

ISSUES

I. Whether petitioner, Samuel R. Weltz, was a domiciliary or resident of the State of New York during the year 1976.

II. Whether petitioner, Samuel R. Weltz, shall be allowed a credit in excess of the actual tax due to this State under Article 22 of the Tax Law for any income tax imposed upon him by the State of New Jersey for the year 1976.

III. Whether the minimum tax and surcharge tax imposed upon petitioner, Samuel R. Weltz, by the Emergency Transportation Act of the New Jersey Tax Law constitutes personal income tax which would entitle said petitioner to a credit against the tax otherwise due to this State under Article 22 of the Tax Law for the year 1976.

FINDINGS OF FACT

1. Petitioner, Samuel R. Weltz, filed a New York State Income Tax Resident Return for 1976, listing his address as 907 Fifth Avenue, New York, New York 10021.

2. On August 17, 1978, the Audit Division issued a Statement of Audit Changes against petitioner, Samuel R. Weltz, for the year 1976 imposing additional income tax of \$16,101.45, plus interest of \$1,833.64, making a total of \$17,935.09. A Notice of Deficiency dated August 17, 1978 was issued in the total amount of \$17,935.09, together with the aforesaid Statement of Audit Changes.

3. Petitioner, Samuel R. Weltz, is an attorney admitted to practice in this State in or about January, 1925 and has been a member of the County Lawyers' Association in New York City since that date. Said petitioner was never admitted to the practice of law in New Jersey.

4. During 1976 (and for some thirteen years prior thereto), petitioner, Samuel R. Weltz, made his office and conducted the practice of law out of his

New York City residence at 907 Fifth Avenue, a three and one-half room cooperative apartment having a base value of approximately \$20,000.

5. During 1976 (and for some thirty-five years prior thereto), petitioner, Samuel R. Weltz, also maintained a year-round residence at 1003 Elberon Avenue, Elberon, New Jersey, a ten-room home with carriage house on two acres, representing an investment of approximately \$100,000.

6. During the year in question, petitioner, Samuel R. Weltz, had no social club affiliations in the State of New York but, rather, was a member of the Hollywood Golf Club and Elberon Beach Club, both of which are located in New Jersey. Said petitioner was active in philanthropic organizations in the local community in New Jersey, maintained a car only in New Jersey, but did maintain a bank account in the State of New York.

7. While petitioner stated that he spent more than 183 days in the State of New Jersey for the years 1974 through 1976, he conceded that he did not maintain a diary for the year in question. Further petitioner testified that "yes, sir, I opted to have my domicile in New York State, sir." He also testified that "...I am a resident and always have been, and always intended to be."

8. For the year in question, petitioner, Samuel R. Weltz, filed a New York State Income Tax Resident return and a New Jersey Non Resident return. Said petitioner also filed a Form 1040, United States Individual Income Tax Return for 1976, listing his residence as 907 Fifth Avenue, New York, New York.

9. During the year in question, petitioner, Samuel R. Weltz, also owned approximately 115 unimproved acres in New Jersey, located about one and one-half miles from his New Jersey residence, which acreage was conveyed by deed dated December 29, 1976 to the New Jersey Conservation Foundation, a non-profit New Jersey corporation, to effectuate its use as a county park in honor of his

deceased wife. This conveyance was reported on December 21, 1976 and March 16, 1977 in local New Jersey publications.

10. Petitioner, Samuel R. Wertz, realized a long-term capital gain on the above conveyance and, pursuant to the Emergency Transportation Act of the New Jersey Tax Law, reported and paid income tax to that State.

11. For the year in question, the income tax liability of petitioner, Samuel R. Wertz, to New York and New Jersey can be summarized as follows:

	<u>New York State</u>	<u>New York City</u>	<u>Total</u>	<u>New Jersey</u>
Personal Income Tax	\$45,901.55	\$13,242.91	\$59,144.46	\$46,166.15
Minimum Income Tax	19,152.47	7,980.16	27,132.65	14,325.00
Surcharge Tax	<u>1,626.35</u>	<u>-0-</u>	<u>1,626.35</u>	<u>1,512.28</u>
Total	\$66,680.37	\$21,223.09	\$87,903.46	\$62,003.43

12. On his New York State return for 1976, petitioner, Samuel R. Wertz, claimed a deduction for credit in the amount of \$62,003.00, representing the taxes paid to New Jersey.

CONCLUSIONS OF LAW

A. That section 601 of the Tax Law impose a tax, inter alia, upon all New York State resident individuals as defined in section 605(a) of the Tax Law.

B. That, to change one's domicile, there must be an intent to make the new location a fixed and permanent home, coupled with an actual acquisition of a residence in the new locality, and the evidence to establish the required intention to effect a change in domicile must be clear and convincing. Klein v. State Tax Comm., 55 A.D.2d 982, 390 N.Y.S.2d 686 (3rd Dept. 1977), aff'd, 43

N.Y.2d 812, 402 N.Y.S.2d 396 (1977); Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138 (3rd Dept. 1976).

C. That the domicile, whether of origin or selection, continues in existence until another is acquired and the burden of proof rests upon the party who alleges a change. Bodfish v. Gallman, 50 A.D.2d 457, 378 N.Y.S.2d 138 (3rd Dept. 1976).

D. That petitioner, Samuel R. Weltz, by his own testimony intended to be a domiciliary and resident of New York State for 1976. Accordingly, all income reported by said petitioner in that year is taxable to New York State.

E. That, pursuant to section 620(a) of the Tax Law, petitioner can claim a credit in 1976 for the minimum tax and surcharge tax imposed upon him by the State of New Jersey. (Petition of Samuel Levine and Mildred Levine, State Tax Commission, September 28, 1979). However, pursuant to section 620(b) of the Tax Law, said credit is limited to the personal income tax due to this state. Accordingly, said resident credit is limited to \$45,901.55.

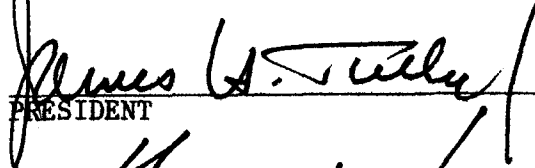
F. That, pursuant to section 601-B of the Tax Law, the credits against tax otherwise allowable under section 620 are not allowed as a credit against the tax surcharge. Pursuant to section 622(d) of the Tax Law, the credits against tax otherwise allowable under section 620 are not allowed as a credit against the minimum income tax.

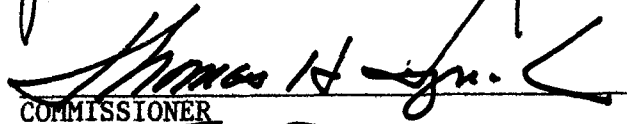
G. That the petition of Samuel R. Weltz is denied and the Notice of Deficiency issued on August 17, 1978 is sustained.

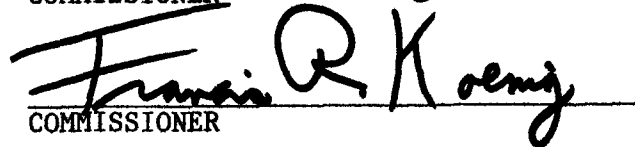
DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER