

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
David & Pauline Cordell

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 Years
1974 & 1975.

State of New York
County of Albany

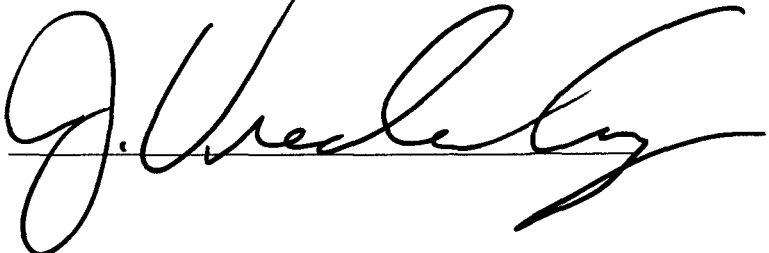
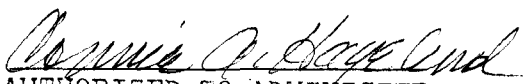
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon David & Pauline Cordell, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David & Pauline Cordell
140 Water St.
New York, NY 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 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
6th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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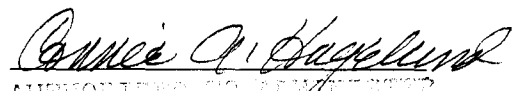
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Marvin E. Basson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin E. Basson
24 Winding Lane
Upper Brookville, NY 11545

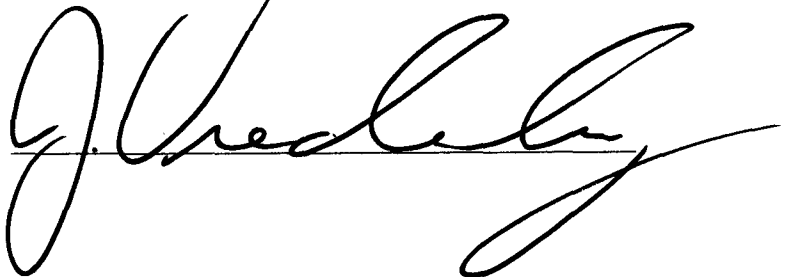
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
6th day of October, 1982.



AUTHORISED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 6, 1982

David & Pauline Cordell
140 Water St.
New York, NY 10005

Dear Mr. & Mrs. Cordell:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Marvin E. Basson
24 Winding Lane
Upper Brookville, NY 11545
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DAVID CORDELL and PAULINE CORDELL
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1974 and 1975.

DECISION

Petitioners David Cordell and Pauline Cordell, 140 Water Street, New York, New York 10005 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 1974 and 1975 (File No. 24571).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1981 at 9:15 A.M. Petitioners appeared with Marvin E. Basson, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioners, David Cordell and Pauline Cordell, were residents of the State of New York for 1974 and 1975.

II. Whether income tax was withheld from petitioners earnings, as claimed on their personal income tax return for 1975.

FINDINGS OF FACT

1. Petitioners, David P. Cordell and Pauline Cordell, filed a New York State income tax nonresident return for 1974 on which they computed their tax separately. On said return, petitioners allocated \$29,500.00/\$46,748.00 of their income to New York State. Petitioners filed a New York State income tax

nonresident return and an amended nonresident return for 1975 on which they also computed their tax separately. On the amended return, petitioners allocated \$15,515.00/\$20,784.00 of their income to New York State.

2. On March 8, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$3,365.34, plus interest of \$758.54 for a total of \$4,123.88. The Notice of Deficiency was based on a Statement of Audit Changes, issued under date of November 23, 1977, which held that income earned by petitioners is subject, in toto, to personal income tax as they are deemed to be residents of New York State; and, that petitioners failed to substantiate that New York State income tax was withheld from their 1975 earnings.

3. Petitioners were domiciled in the State of Massachusetts prior to the years in issue. Petitioners contend they moved to New Jersey in early 1974, in order to work in their son's newly formed business in New York City. Petitioners then contend that they remained in New Jersey until their son's death sometime in 1975. Petitioners argued that they moved to New York sometime in May 1975, in order to continue the business.

No leases were submitted in evidence to show where petitioners resided for subject years.

4. Petitioners nonresident personal income tax returns for the subject years did not show their home address; in lieu thereof, the address shown thereon was the New York State address of the preparer of said returns. The 1975 amended personal income tax return filed by the petitioners was received by the Department of Tax and Finance in May of 1976. Said return continued to show the preparer's address, notwithstanding that petitioners contend that they leased an apartment in New York in May of 1975.

5. Petitioners wages for the subject years were derived wholly from New York sources.

6. Petitioners failed to submit information with respect to the alleged amount of New York State income tax withheld for 1975.

CONCLUSIONS OF LAW

A. That petitioners, David Cordell and Pauline Cordell, were domiciled in New York State for 1974 and 1975. That they failed to sustain the burden of proof required under section 689(e) of the Tax Law to show that they were not domiciled in New York State for subject year in accordance with the meaning and intent of section 605(a) of the Tax Law. That the testimony elicited from petitioners as to where they resided and their financial nexus to New York was speculative and unsupported by any credible evidence.

B. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that they had New York State tax withheld from their wages as claimed.

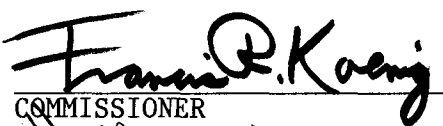
C. That the petition of David Cordell and Pauline Cordell is denied; that the Notice of Deficiency issued March 8, 1978 is sustained together with such additional interest as may be legally due and owing.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER