

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Alexander & Grace Landi :
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. :

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Alexander & Grace Landi, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander & Grace Landi
P.O. Box 399
Cornwall, NY 12518

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
3rd day of January, 1983.

Kathy Pfeifferbach

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
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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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Robert P. Herzog the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

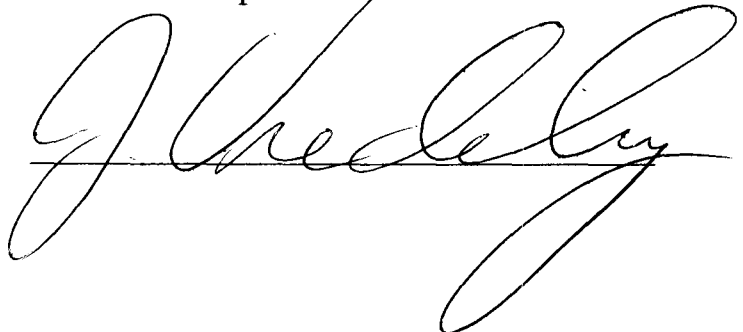
Robert P. Herzog
274 Madison Ave.
New York, NY 10016

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
3rd day of January, 1983.

Kathy Hoffenbach



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

January 3, 1983

Alexander & Grace Landi
P.O. Box 399
Cornwall, NY 12518

Dear Mr. & Mrs. Landi:

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
Robert P. Herzog
274 Madison 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 | : | |
| | : | |
| ALEXANDER LANDI and GRACE LANDI | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1976. | : | |

Petitioners, Alexander Landi and Grace Landi, P.O. Box 399, Cornwall, New York 12518, 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 Nos. 30048 and 30508).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 5, 1982 at 9:00 A.M. Petitioners appeared with Robert P. Herzog, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether the Department of Taxation and Finance's Answer to the Perfected Petition fails to comply with 20 NYCRR 601.6(a)(2), thereby rendering said Answer, the evidentiary hearing and the Notice of Deficiency null and void.

II. Whether petitioner Alexander Landi was domiciled in and taxable as a resident of New York for the 1976 tax year.

FINDINGS OF FACT

1. Petitioner Grace Landi timely filed a 1976 New York State Income Tax Resident Return on April 10, 1977. Petitioner Alexander Landi did not file a New York State personal income tax return for the year 1976.

2. On March 3, 1980, the Audit Division issued separate notices of deficiency to petitioners. The notice issued against Grace Landi set forth an additional tax due of \$91.54, plus interest, while the notice issued to Alexander Landi asserted tax due of \$2,632.64, plus interest. Both of the aforementioned notices of deficiency were based on a Statement of Audit Changes dated February 14, 1980, wherein the following explanation was given:

"When a husband and wife file a joint Federal return and separate New York State returns they must use Form IT-201/208 using column A & B to report their income.

Your 1976 personal income tax liability has been computed from information obtained from the Internal Revenue Service under authorization of Federal Law Section 6103(d) of the Internal Revenue Code."

3. At the hearing held herein, the Audit Division stated that the deficiency issued to Grace Landi was premised on the shifting of two exemptions from the computation of her taxable income to the computation of Alexander Landi's taxable income. It was further stated that if Mr. Landi was found not to be required to file a New York State return, then the deficiency issued against Mrs. Landi would be of no effect.

4. Petitioner Alexander Landi was born and raised in the State of New Jersey. For years prior to 1979, he lived and worked almost exclusively in New Jersey. During the tax year in question (1976), Mr. Landi was 62 years old.

5. Alexander Landi first met his future wife Grace in April, 1974. At that time, she was living in Cornwall, New York, and he was living at 21 Oxford Street, Haledon, New Jersey. The residence located at 21 Oxford Street was a two-family structure where Mr. Landi lived with his adult daughter on the first floor, while the second floor flat was rented to others. Mr. Landi had purchased

this house sometime in the early to mid-1940's, and he transferred ownership of said house to his daughter, via gift, in 1967 or 1968.

6. During the tax year in question and for years prior thereto, Mr. Landi was involved in business as a contractor, running the Lanist Millwright Contractors Co., Inc. Mr. Landi ran this business out of an office located in the basement of the house at 21 Oxford Street, Haledon, New Jersey.

7. In April, 1975, Alexander and Grace Landi were married and moved into a house owned by Mr. Landi at P.O. Box 399, Cornwall, New York. Mr. Landi had purchased this house, prior to meeting Grace in April, 1974, as a retirement home since he liked the area. Mr. Landi testified that, after his marriage to Grace, it was his intention to reside permanently in Cornwall, New York with his new wife.

8. After living in Cornwall, New York "for a couple of months", Mr. Landi found it too difficult to commute back and forth between Cornwall and Haledon, New Jersey. He talked to his wife about the possibility of moving to New Jersey so as to enable him to be closer to his contracting business. Mrs. Landi, who had two school aged children from a prior marriage, did not want to remove her children from school until after their graduation. Mr. Landi testified that he and his wife had a "little argument" about moving to New Jersey. Immediately thereafter, petitioners separated and Mr. Landi left the house in Cornwall, New York and moved back into the house in Haledon, New Jersey with his daughter. Petitioners were not legally separated pursuant to a written separation agreement.

9. For all of 1976, Mr. Landi lived and worked in New Jersey. Except for a couple of day trips to Cornwall, New York to check on the structural condition of the house, Mr. Landi did not spend any time at said abode.

10. Petitioner Alexander Landi continued to pay the real estate taxes on the house in Cornwall, New York and also gave money to Grace Landi to "pay for things that the house needed". Mr. Landi also gave his daughter money for his rental of the house in Haledon, New Jersey and also contributed toward payment of the utility bills.

11. In 1976, petitioner Alexander Landi purchased a new automobile which he registered in New Jersey. He was registered to vote and voted in the State of New Jersey and maintained bank accounts only within New Jersey. Mr. Landi received all his mail in New Jersey, was a member of a union serving New Jersey and, in 1976 and 1977, paid income taxes to the State of New Jersey as a resident individual.

12. Petitioner Alexander Landi stated that when he moved from Cornwall, New York back to Haledon, New Jersey in mid-1975, it was a move which was permanent in nature. At the time he moved back to Haledon, he was not attempting to sell or liquidate his contracting business. In December, 1978, Mr. Landi liquidated his contracting business, retired, reconciled with Grace and moved back into the house located in Cornwall, New York.

13. Petitioners argue that the Answer to the Perfected Petition does not comply with 20 NYCRR 601.6(a)(2) in that it does not:

- a. fully and completely advise the petitioner and the Commission of the Audit Division's defense,

- b. contain a specific admission or denial of each material allegation of fact, and

- c. contain any statement of facts.

CONCLUSIONS OF LAW

A. That petitioner's argument to dismiss on the ground that the Answer to the Perfected Petition failed to comply with 20 NYCRR 601.6(a)(2) is denied. The Rules of Practice and Procedure should not be regarded as mandatory but directory only. (Matter of Santoro v. State Tax Commission, Albany County Special Term, Conway, J., January 4, 1979.)

B. That petitioner Alexander Landi was not domiciled in or taxable as a resident of New York State during the year 1976 within the meaning and intent of section 605(a) of the Tax Law then in effect and 20 NYCRR 102.2. That petitioner Alexander Landi was taxable as a nonresident of New York for the year 1976; however, since he earned no income from New York sources during said year, he was not required to file a 1976 New York State income tax return.

C. That the petition of Alexander Landi and Grace Landi is granted. Accordingly, the Notice of Deficiency issued to Alexander Landi is cancelled pursuant to Conclusion of Law "B", supra, and the Notice of Deficiency issued to Grace Landi is cancelled pursuant to Finding of Fact "3", supra.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER