

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Jean-Claude & Solange Landau : 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 :  
1972 - 1974.

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State of New York  
County of Albany

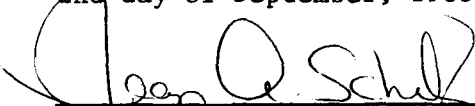
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of September, 1983, she served the within notice of Decision by certified mail upon Jean-Claude & Solange Landau, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Jean-Claude & Solange Landau  
1 West 81st Street  
New York, NY 10024

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  
2nd day of September, 1983.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

  
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STATE OF NEW YORK

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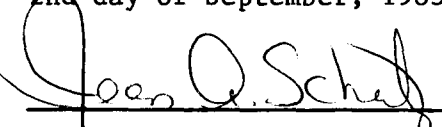
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of September, 1983, she served the within notice of Decision by certified mail upon Howard J. Misthal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard J. Misthal  
c/o David Berdon & Co., CPA's  
415 Madison Ave.  
New York, NY 10017

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  
2nd day of September, 1983.

  
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AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

September 2, 1983

Jean-Claude & Solange Landau  
1 West 81st Street  
New York, NY 10024

Dear Mr. & Mrs. Landau:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Howard J. Misthal  
c/o David Berdon & Co., CPA's  
415 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JEAN-CLAUDE LANDAU AND SOLANGE LANDAU	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972, 1973 and	:	
1974.	:	

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Petitioners Jean-Claude Landau and Solange Landau, 1 West 81st Street, New York, New York 10024, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 through 1974 (File Nos. 18193, 18194 and 24234).

A formal hearing was held before Frank W. Barrie, Hearing Officer at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1982 at 9:15 A.M., with all briefs to be submitted by December 17, 1982. Petitioners appeared by David Berdon & Co., C.P.A.'s (Howard Misthal, C.P.A.) The Audit Division appeared by Paul B. Coburn, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether petitioners were residents of New York State for personal income tax purposes during the years 1972 through 1974.

II. Whether petitioners had reasonable cause for failing to file a timely New York State personal income tax return for the 1973 tax year.

FINDINGS OF FACT

1. Petitioners, Jean-Claude Landau and Solange Landau, filed a New York State combined income tax resident return for 1972. They filed separately on the same return and noted thereon that their period of New York residence was

from January 1, 1972 to July 6, 1972. They reported "Total New York Income" of \$87,223.00.

2. Petitioners filed joint New York State income tax nonresident returns for 1973 and 1974 reporting "Total New York Income" of \$9,794.00 for 1973 and a loss of \$6,996.00 for 1974. The 1973 return indicated tax due of \$135.76 and the 1974 return indicated no tax was due. The record is not clear concerning the date on which petitioners filed the 1973 return.

3. On January 24, 1977, the Audit Division issued a Notice of Deficiency against petitioner Solange Landau showing a personal income tax deficiency of \$584.03 plus interest of \$165.48 for 1972. A Statement of Audit Adjustment issued on the same date provided the following explanation:

"Information submitted indicates that you did not definitely and finally abandon your New York domicile. Therefore, you are considered a New York resident for the year 1972, and as such, you are taxable on income from all sources.

In the case of mines, oil and gas wells and other natural gas deposits, any deduction for percentage depletion made in arriving at your total Federal income must be added on Line 2, Page 1 of your New York return."<sup>1</sup>

4. On January 24, 1977, the Audit Division issued a Notice of Deficiency against petitioner Jean-Claude Landau showing a personal income tax deficiency of \$416.34 plus interest of \$490.78 for the 1972 taxable year. A Statement of Audit Adjustments issued on the same date provided in addition to the explanation described in Finding of Fact "3", supra, the following:

" The \$2,865.00 accelerated depreciation on real property shown as an item of tax preference on your 1972 Federal Form 4625 (Computation of Minimum Income Tax) is also an item of tax preference for New York State tax purposes, and

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<sup>1</sup> Petitioner Solange Landau did not challenge the adding back of the Federal deduction for percentage depletion in the case of mines, oil and gas wells.

therefore, this item of tax preference has been included in total items of tax preference in computing 1972 New York Minimum Income Tax."<sup>2</sup>

5. On September 11, 1978, the Audit Division issued a Notice of Deficiency against petitioners, Jean-Claude Landau and Solange Landau showing personal income deficiencies of \$20,016.53 plus penalty under Tax Law §685(a)(1) and interest for the 1973 tax year and \$3,790.85 plus interest for the 1974 tax year. The computation for 1973 allowed credit for tax previously stated of \$135.76. Attached to the Notice of Deficiency was a Statement of Audit Changes which provided the following explanation:

"Information submitted indicates that you did not definitely and finally abandon your New York domicile. Therefore, you are considered a resident of New York State for the entire year 1973 and 1974, and as such, you are taxable on income from all sources."

The Statement of Audit Changes also detailed the computations by which petitioners' personal income tax deficiencies were determined.

6. Petitioner Jean-Claude Landau was born in Paris, France on March 29, 1923. A French citizen by birth, he became a United States citizen in August, 1944 when he was twenty-one years of age. For the next twenty-eight years, until 1972, he was a resident of New York State.

7. Petitioner Solange Landau was born in Paris, France on March 9, 1935. A French citizen by birth, she did not become a United States citizen until 1982.

8. Petitioners were married on July 1, 1957 in Paris, France. Their four children are United States citizens by birth, although they also have dual French citizenship since they were born of parents with French nationality.

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<sup>2</sup> Petitioner Jean-Claude Landau did not challenge (i) the treatment of accelerated depreciation as an item of tax preference and (ii) the adding back of the Federal deduction for percentage depletion in the case of mines, oil and gas wells.

According to petitioner Jean-Claude Landau the language of the household was "(m)ainly French".

9. Petitioner Jean-Claude Landau, a chemical engineer, is carrying on the successful family business of manufacturing and selling diamonds. Jean-Claude Landau testified that "we would buy rough diamonds and cut them and polish them and sell them at the wholesale level". The family business was conducted in New York City, Antwerp, Belgium and Johannesburg, South Africa. While Jean-Claude Landau ran the business in New York, his father, Nathan David Landau, ran the business in Antwerp. The business was conducted in various corporate forms. In the United States, the corporations included Landau Consolidated Corporation which bought rough cut diamonds, polished and sold them on the wholesale level, and Union Diamond Company, Inc. which resold rough cut diamonds. In Belgium, the family business was known as Continental Diamond Company, S.A.

10. In 1972, both business and personal reasons combined to prompt petitioners to move from New York City to Brussels, Belgium. Nathan David Landau died and it became necessary for petitioner Jean-Claude Landau to take over the running of the family business in Antwerp. In fact, Jean-Claude Landau testified that even before the death of his father in April, 1972, he contemplated moving back to Europe in order to assist his father who "was about eighty... (and) although still active he obviously needed help", and petitioners in early 1972 had shown the elderly Nathan David Landau the house in Uccle, Belgium which they intended to purchase as their home. According to Jean-Claude Landau, since there were capable associates, Berham Reinhold and Jack Reigot, to run the New York City end of the business he "seemed like the logical person to carry on (the European operation)." Conveniently, this business need harmonized with petitioner Solange Landau's desire to return to Europe. Jean-Claude Landau testified that

his wife was very happy about moving to Europe since "she had always been more comfortable in the French language and in the European environment."

11. Petitioner and their four children moved to Belgium on July 7, 1972.

12. On October 11, 1972, petitioners sold their New York City home, a ten room duplex at 480 Park Avenue pursuant to a contract of sale dated August 24, 1972. On January 3, 1973, petitioners sold their summer home, "the Hayloft", in Syosset, Long Island, pursuant to a contract of sale dated October 25, 1972. In 1972,<sup>3</sup> they bought a large home consisting of twelve or thirteen rooms in Uccle, Belgium, a residential suburb of Brussels.<sup>4</sup>

Petitioners did retain a two and a half room apartment at 480 Park Avenue in New York City. It was on the same landing as the duplex which they sold but faced the back of the building and had no view. Petitioner Jean-Claude Landau testified that he retained the apartment because he needed a place to stay on his business trips to New York and had determined that the maintenance fees on the apartment were lower than the rates at a suitable hotel and because the real estate market was soft at the time he moved from New York, which impeded a sale of the apartment.

13. Petitioners moved their furniture from their summer house and the Park Avenue duplex to their new home outside of Brussels. Petitioner also sold

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<sup>3</sup> Although petitioners apparently did not move into the house in Uccle until September, 1972, they had decided to purchase the particular house in early 1972. Jean-Claude Landau testified that petitioners lived in such house for all of the years they resided in Belgium "except the first few weeks when the house was not ready for occupation yet."

<sup>4</sup> Although the family business was centered in Antwerp, petitioners chose to reside in Uccle, a residential suburb of Brussels, within commuting distance of Antwerp, since petitioners wanted their sons to attend French schools, and French is the predominant language spoken in Brussels while Antwerp is exclusively Flemish.



their car in 1972 and eventually purchased three cars while living in Belgium. Jean-Claude Landau obtained a Belgian driver's license.

14. After moving to Belgium, petitioners joined a synagogue in Brussels and Jean-Claude Landau joined various Belgian business and social organizations.

15. Petitioners paid personal income taxes in Belgium during the years at issue, and they did not take advantage, according to Jean-Claude Landau, of "certain tax benefits available to temporary residents".

16. Petitioner, during the years at issue, had close relatives living in Paris, France and according to petitioner Jean-Claude Landau had no close relatives living in the United States.

17. During the years at issue, petitioners spent less than thirty days per year in the State of New York.

18. Included in petitioner's brief are proposed findings of fact, all of which have been incorporated into this decision with the exception of proposed findings of fact 13, 19, 22, 23, 25, 26, 28, 29, 31, 34 and 35 which were deemed unnecessary for the decision in this matter. Also included were proposed findings of ultimate fact which have not been included herein except for finding 39. Findings 36, 37, 38 and 40 are conclusions of law.

#### CONCLUSIONS OF LAW

A. That Tax Law §605(a) provides as follows:

"Resident Individual. A resident individual means an individual:

(1) who is domiciled in this State unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State, or

(2) who is not domiciled in this State but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in the armed forces of the United States during an induction period."

B. That to effect a change of domicile, there must be an actual change in residence, coupled with an intention to abandon the former domicile and to acquire another. Matter of William H. Friesell and Susan W. Friesell, State Tax Commission, September 8, 1982.

C. That petitioners have sustained their burden of proof under Tax Law section 689(e) to show that on July, 1972 they changed their domicile to Belgium. In July, 1972 they established a new residence in Belgium with an intention to abandon their former domicile in New York City. In addition, the findings of fact, herein, support a conclusion that petitioners intended to make their fixed and permanent home in Belgium. See Matter of Arthur A. Borsei and Joyce B. Borsei, State Tax Commission, September 8, 1982. Furthermore, since petitioners spent less than thirty days per year in the State of New York during each of the years at issue, they cannot be viewed as New York residents under Tax Law §605(a)(2). Therefore, petitioners were not residents of New York for income tax purposes after their move to Belgium in July, 1972.

D. That although petitioners were not required to file a resident personal income tax return for the 1973 tax year, they were required to file a timely nonresident personal income tax return for such year since they had income from New York sources during 1973. Pursuant to Tax Law §689(e) and Finding of Fact "2", herein, petitioners have not sustained their burden of proof to show that their failure to file a timely 1973 personal income tax return on or before the prescribed date for filing was due to reasonable cause. However, the Audit Division is directed to recompute the amount of such penalty in conformity with the determination herein that petitioners were not taxable as residents during 1973.


E. That the petitions of Jean-Claude Landau and Solange Landau are granted to the extent provided herein and the Audit Division is directed to recompute petitioners' liability taking into consideration their change of domicile and residence from New York to Belgium in July 1972.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 02 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER