

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Arnold M. Langsbard :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Year 1978.

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Arnold M. Langsbard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold M. Langsbard  
c/o Anthony Grosso  
1767 Veterans Memorial Hwy.  
Central Islip, NY 11722

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
23rd day of May, 1985.

David Parchuck

Annie P. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Arnold M. Langsbard :

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& UBT under Article 22 & 23 of the Tax Law for :  
the Year 1978.

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Anthony Grosso, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Grosso  
Soba, Grosso & Golub, P.C., CPA  
1767 Veterans Memorial Hwy.  
Central Islip, NY 11722

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
23rd day of May, 1985.

David Parchuck

Annie P. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 23, 1985

Arnold M. Langsbard  
c/o Anthony Grosso  
1767 Veterans Memorial Hwy.  
Central Islip, NY 11722

Dear Mr. Langsbard:

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 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Anthony Grosso  
Soba, Grosso & Golub, P.C., CPA  
1767 Veterans Memorial Hwy.  
Central Islip, NY 11722  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ARNOLD M. LANGSBARD	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Year 1978.	:	

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Petitioner, Arnold M. Langsbard, c/o Anthony Grosso, 1767 Veterans Memorial Highway, Central Islip, New York 11722, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1978 (File No. 41240).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 22, 1984 at 1:15 P.M., with all briefs to be submitted by September 22, 1984. Petitioner appeared by Anthony Grosso, CPA. The Audit Division appeared by John P. Dugan, Esq. (Kevin Cahill, Esq., of counsel).

ISSUES

I. Whether during the year 1978, petitioner was domiciled in New York and either maintained a permanent place of abode in New York, maintained no permanent place of abode elsewhere, or spent in the aggregate more than 30 days in New York, and was thus a resident individual under Tax Law section 605(a)(1).

II. Whether the income derived by petitioner from his activities as an electrician is subject to unincorporated business tax.

FINDINGS OF FACT

1. On October 16, 1981, Arnold M. Langsbard (hereinafter "petitioner") late filed a 1978 New York State Income Tax Resident Return in conjunction with

a Schedule for Change of Resident Status whereon he claimed that he was a resident of New York from January 1, through February 28, 1978. Petitioner's only source of income for said year was a business net profit of \$12,211.00 derived from his activities as a "journeyman electrician". Petitioner reported on the aforestated schedule that \$1,675.00 of said income was attributable to his resident period and \$10,536.00 was attributable to his nonresident period. The portion attributable to his nonresident period was reported as nontaxable for New York State purposes.

2. Petitioner's address, as reported on both his tax return and a copy of his Federal Schedule C submitted therewith, was 2900 Hempstead Turnpike, Levittown, New York 11756. Said address was that of his representative, Anthony Grosso, CPA. Two wage and tax statements from the Vacation Expense Fund Of The Joint Industry Board Of The Electrical Industry were attached to petitioner's return. One such statement, which reported wages of \$1,640.00, listed petitioner's address as 161-51 Jewel Avenue, Flushing, New York 11365. The other statement, which reported wages of \$820.00, listed petitioner's address as "17508 Brwnstne Blv", Toledo, Ohio 43614. The Flushing, New York address was that of petitioner's parents, with whom he resided prior to his alleged change of residence.

3. On March 8, 1982, the Audit Division issued a Statement of Audit Changes to petitioner wherein it was held that:

"Since your business was located in New York State, you are subject to New York personal income tax and the New York unincorporated business tax for the entire year."

Accordingly, a Notice of Deficiency was issued against petitioner on September 10, 1982 asserting additional New York State personal income tax of \$294.24, unincorporated business tax of \$160.55, penalty of \$113.70 and interest of \$156.09, for a total due of \$724.58.

4. Petitioner's grounds for relief, as stated in his petition, were as follows:

"The taxpayer was not domiciled in the State of New York, did not maintain a permanent place of abode in the State and during the year did not spend in the aggregate, more than 183 days in New York. Therefore, the taxpayer contends that he is not subject to either personal or unincorporated business tax for the year 1978."

5. Petitioner did not personally appear at the hearing held herein.

6. Petitioner's representative argued that petitioner changed his residence to Florida on or about March 1, 1978. He further argued that petitioner's income derived from his activities as an electrician was received for services rendered as an employee and that such income was earned without the State of New York.

7. No evidence was submitted at the hearing to support petitioner's positions in this matter.

8. Subsequent to the hearing petitioner submitted a notarized affidavit wherein he deposed and said:

"That in February, 1978, I changed my residence from Flushing, New York to my present residence, which is 20311 N.E. 2nd Avenue - J2, North Miami Beach, Florida 33179.

That since February, 1978 I have never returned to the State of New York."

#### CONCLUSIONS OF LAW

A. That domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent. [20 NYCRR 102.2(d)(1)]. 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. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time [20 NYCRR 102.2(d)(2)].

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that he changed his domicile from New York State to the State of Florida during taxable year 1978. Accordingly, petitioner is deemed to have been domiciled in New York State during the entire year 1978.

C. That section 605(a) of the Tax Law provides, in pertinent part, that 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..."

D. That petitioner has failed to sustain his burden of proof to show that he had met the requirements provided in section 605(a)(1) of the Tax Law. Accordingly, petitioner is deemed to have been a resident individual of New York State during the entire taxable year 1978.


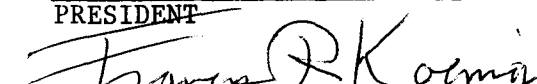
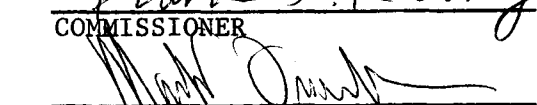
E. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, as incorporated into Article 23 by section 722(a), to show that his income derived from his activities as an electrician was not subject to the imposition of unincorporated business tax.

F. That the petition of Arnold M. Langsbard is denied and the Notice of Deficiency issued September 10, 1982 is sustained together with such additional interest and penalty as may lawfully be owing.

DATED: Albany, New York

MAY 23 1985

STATE TAX COMMISSION

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER