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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEKS KURGVEL and SALME KURGVEL

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1962, 1963,  
1964 and 1965.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

MARTHA FUNARO

, 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 5th day of March, 1973, she served the within

Notice of Decision (or Determination) by (certified) mail upon ALEKS and SALME KURGVEL

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Aleks and Salme Kurgvel  
3602 16th Street, N.W.  
Washington, D.C. 20010

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

5th day of March, 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 5, 1973**

**Aleks and Salme Kurgvel**  
**3602 16th Street, N.W.**  
**Washington, D.C. 20010**

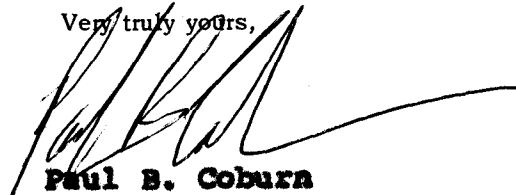
**Dear Mr. and Mrs. Kurgvel:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,



**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALEKS KURGVEL and SALME KURGVEL :  
for Redetermination of Deficiency or for :  
Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1962, 1963, 1964 and 1965. :  
:

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DECISION

Petitioners, Aleks Kurgvel and Salme Kurgvel, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1962, 1963, 1964 and 1965. (File Nos. 29159912 and 49203623). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 14, 1972, at 10:15 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Was petitioner, Aleks Kurgvel, a resident individual of New York State during the years 1962, 1963, 1964 and 1965?

II. Was petitioner, Aleks Kurgvel, entitled to a credit against New York State personal income taxes due for the years 1962, 1963, 1964 and 1965, for personal income taxes paid to the District of Columbia?

FINDINGS OF FACT

1. Petitioners, Aleks Kurgvel and Salme Kurgvel, filed New York State combined income tax returns for the years 1962 and 1965. They filed New York State income tax resident returns for the years 1963 and 1964. On their returns for the years 1962, 1963 and 1964, they subtracted from total income, the salary income earned by petitioner, Aleks Kurgvel, during said years. On their 1965 return, they included his salary income in total New York income but claimed a resident tax credit in the sum of \$188.22 for income tax paid to the District of Columbia for said year.

2. On March 28, 1966, petitioner, Aleks Kurgvel, filed claims for resident tax credits for income taxes paid to the District of Columbia in the sum of \$152.53 for the year 1962, \$169.06 for the year 1963 and \$243.77 for the year 1964.

3. On March 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Aleks Kurgvel and Salme Kurgvel, imposing additional personal income tax for the years 1962, 1963 and 1964 in the sum of \$249.80, upon the grounds that they were New York State residents during said years and that all of their income during said years was taxable whether earned within or without New York State. It allowed a credit for personal income tax paid to the District of Columbia for said years. Petitioners paid the sum of \$249.80 to the Income Tax Bureau on April 1, 1966.

4. On November 14, 1966, the Income Tax Bureau issued a supplemental Statement of Audit Changes against petitioners, Aleks Kurgvel and Salme Kurgvel, disallowing credits claimed for personal income

tax paid to the District of Columbia for the years 1962, 1963 and 1964, in the total sum of \$565.36, which credits had been previously allowed in the Statement of Audit Changes, dated March 28, 1966, upon the grounds that New York residents are not permitted a tax credit for taxes paid to the District of Columbia since it allows a credit for income taxes paid to New York State by a New York resident. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$647.47.

5. On December 19, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Aleks Kurgvel, disallowing a credit claimed for personal income tax paid to the District of Columbia for the year 1965 in the sum of \$188.22 and accordingly issued a Notice of Deficiency in the sum of \$195.87.

6. Petitioner, Aleks Kurgvel, was born in Estonia. He married his wife, petitioner, Salme Kurgvel, in Estonia in 1928. He was employed by the United States Army in Europe prior to 1953. In 1953 he obtained civilian employment in Washington, D.C. as a linguist and research analyst with the United States Army. He has held that position until the present time. He has become a United States citizen.

7. Petitioner, Salme Kurgvel, and her two children emigrated to the United States prior to 1953. Petitioners leased an apartment in Long Island City, New York until 1963. In 1963, they purchased, as tenants by the entirety, a two family home in Elmhurst, New York. Petitioner, Salme Kurgvel, has worked for First National City Bank in New York City since 1953.

8. Petitioner, Aleks Kurgvel, lived in a furnished room with kitchen privileges and without a private bath in Washington, D.C. during the years 1962, 1963, 1964 and 1965. He has been a member of the Estonian Society of Washington, D.C. since 1961. He participated in the affairs of two Estonian churches in the Washington, D.C. area. He served on a Washington, D.C. jury in 1962.

9. Petitioner, Aleks Kurgvel, voted in New York State in 1960.

10. Petitioner, Aleks Kurgvel, held a New York State driver's license during the years 1962, 1963, 1964 and 1965.

11. Petitioner, Aleks Kurgvel, executed a will in Washington, D.C. in 1964.

12. Petitioner, Aleks Kurgvel, spent as many weekends as he possibly could at his home in New York City during the years 1962, 1963, 1964 and 1965. He failed to submit any documentary or other substantial evidence to prove that he spent less than 30 days in New York State during each of said years.

13. Petitioner, Aleks Kurgvel, personal income tax due to New York State exceeded the amount of his personal income tax due to the District of Columbia during each of the years 1962, 1963, 1964 and 1965, before any allowances for credits for income taxes paid to other jurisdictions.

#### CONCLUSIONS OF LAW

A. That petitioner, Aleks Kurgvel, was domiciled in New York State, during the years 1962, 1963, 1964 and 1965, spent more than 30 days within New York State during each of said years and maintained a permanent place of abode within New York State during each of said

years and, therefore, he was subject to New York State personal income tax as a resident individual during said years, even though his income was earned while working in the District of Columbia, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.


B. That petitioner, Aleks Kurgvel, was a resident of the District of Columbia during the years 1962, 1963, 1964 and 1965, since he maintained a place of abode in the District of Columbia for more than seven months during each of said years in accordance with the meaning and intent of section 47-1551c, D.C. Code. He, however, was entitled to a credit against personal income taxes payable as a resident to the District of Columbia for said years equal to the amount of personal income taxes payable to New York State since he was a domiciliary of New York State during said years in accordance with the meaning and intent of section 47-1567(d), D.C. Code. That since the amount of personal income tax due to New York State exceeded the amount of personal income tax due to the District of Columbia during each of said years, petitioner, after application of the credit allowed by section 47-1567(d), D.C. Code, did not owe any personal income tax to the District of Columbia. Since he did not owe any personal income tax for said years to the District of Columbia, he was not entitled to any credits against his New York State personal income tax for said years in accordance with the meaning and intent of section 620(a) of the Tax Law.

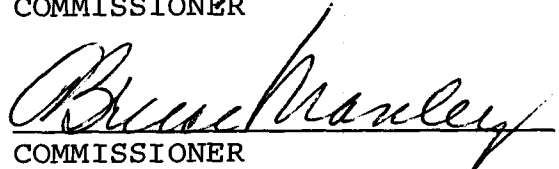


C. That the petition of Aleks Kurgvel and Salme Kurgvel is denied and the notices of deficiency issued November 14, 1966 and December 19, 1966, are sustained.

DATED: Albany, New York  
March 5, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER