

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH KOZEL and NETTIE KOZEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year ~~(xxxxxx)~~ Period(s) 1972.:

State of New York  
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Joseph Kozel and Nettie Kozel ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Joseph Kozel  
18638 N.E. 18th Avenue  
Apartment 243  
North Miami Beach, Florida 33162  
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)~~ ~~(xxxxxx)~~ 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

16 day of August, 1977.

Marsina Donnini

Janet Bach

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOSEPH KOZEL and NETTIE KOZEL :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (8) 22 of the :  
Tax Law for the Year (8) ~~1971~~ (8) 1972. :

State of New York  
County of Albany

Marsina Donnini , 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 16 day of August , 1977, she served the within  
Notice of Decision by (certified) mail upon Harvey Levy, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Harvey G. Levy, CPA  
606 Executive Office Bldg.  
Rochester, New York 14614

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

16 day of August , 1977.

Marsina Donnini

Janet Mack



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 16, 1977**

**Mr. & Mrs. Joseph Kozel  
18638 N.E. 18th Avenue  
Apartment 243  
North Miami Beach, Florida 33162**

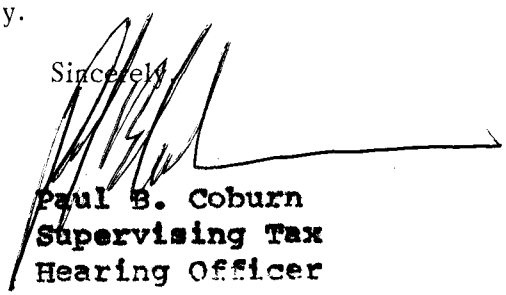
**Dear Mr. & Mrs. Kozel:**

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Paul B. Coburn  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 7, 1977 at 2:45 P.M. Petitioners appeared by Harvey G. Levy, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

## ISSUE

I. Whether petitioners, Joseph Kozel and Nettie Kozel, became nonresidents of New York State prior to the date of the sale in 1972 of the stock of J. Kozel & Son, Inc. on an installment basis.

FINDINGS OF FACT

1. Petitioners, Joseph Kozel and Nettie Kozel filed a New York State income tax resident return for the year 1972 on April 3, 1973. The return listed Rochester, New York as their home address. On schedule D of his Federal return, a copy of which was annexed to his New York return, he listed long term capital gain of \$42,746.00 from a profit sharing plan distribution and \$6,080.00 representing proceeds received in 1972 from an installment sale of 40 shares of J. Kozel & Son, Inc. for the total sum of \$240,000.00 resulting in a long term capital gain of \$228,000.00 and \$160.00 representing Line 7 capital gain distributions. This resulted in a total net long term capital gain of \$48,980.00. They reported one half of said sum or \$24,493.00 on Line "5 sale or exchange of capital assets" on their return. They paid \$1,163.20 in addition to the \$11,017.20 previously withheld or paid as estimated tax.

2. On July 18, 1973, petitioners filed an amended New York State income tax return for the year 1972. It differs from the original return in that on schedule A, Line 5, they reported \$25,933.00 as income from sale or exchange of capital assets and on Line 2 they added to income \$5,187.00 representing the 20% capital gain modification as required by section 612(b)(11) of the Tax Law. They also recomputed the minimum income tax due reducing it from \$989.22 to \$303.91. They claimed a refund of \$921.07. The Income Tax Bureau issued a refund in the sum of \$919.56.

3. On April 12, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Joseph Kozel and Nettie Kozel imposing additional personal income tax for the year 1972 in the sum of \$23,432.80, upon the grounds that petitioners had failed to comply with section 654(c)(4) of the Tax Law and, therefore, the amount of the entire installment sale of the stock of J. Kozel & Son, Inc. was income attributable to New York State for the year 1972. This resulted in income from sale and exchange of capital assets of \$131,193.00.

4. On October 28, 1972, petitioner, Joseph Kozel, transferred his forty shares of stock in J. Kozel & Son, Inc. to said corporation for two hundred and forty thousand dollars (\$240,000.00). A promisory note dated October 1, 1972 required quarterly payments each year of ten thousand dollars (\$10,000.00) to Joseph Kozel, commencing on December 1, 1972.

5. Petitioner, Joseph Kozel, was an officer and director of J. Kozel and Son, Inc. The payroll schedule of said corporation indicated that wages were paid to him on August 25, 1972 in the amount of \$1,600.00, from which state and Federal taxes were withheld. The payroll schedule of September 1, 1972 indicated wages of \$400.00 paid to petitioner with the usual deductions for taxes, and no wages were paid to him thereafter.

6. Petitioners, Joseph Kozel and Nettie Kozel, had leased an apartment in Rochester, New York for two years commencing on September 1, 1971 and ending on August 31, 1973. They owned a condominium in Florida for some five years, and their time was divided between the two states.

7. Petitioners, Joseph Kozel and Nettie Kozel, became nonresidents in the latter part of 1972 when they moved to Florida.

8. Petitioner, Joseph Kozel, offered no documentary or other substantial evidence that they changed their domicile to Florida or that they became nonresidents in 1972 prior to the date of the transfer of his stock in J. Kozel & Son, Inc.

9. Petitioners, Joseph Kozel and Nettie Kozel, failed to accrue their income for that portion of 1972 preceeding their change of resident status, per the requirements of 654(c)(1) of the Tax Law and 20 NYCRR 148.10 or to file a security bond as required by section 654(c)(4) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That petitioners, Joseph Kozel and Nettie Kozel, offered no documentary or other substantial evidence to prove either a change of domicile or the exact date of change of their residency status other than that the change was effected in 1972. Therefore, the petitioners installment sale income was subject to the special accruals as required by section 654(c)(1) of the Tax Law.

B. That within the meaning and intent of section 654(c)(4) of the Tax Law and 20 NYCRR 148.11, there is no exception to the necessity of meeting the requirements of said statute and regulation in order to avoid the accruals required by section 654(c)(1) of the Tax Law and 20 NYCRR 148.10. Petitioners, Joseph Kozel and Nettie Kozel, did not meet said requirements since they failed to file a security bond or other security satisfactory to the State Tax Commission at any time.

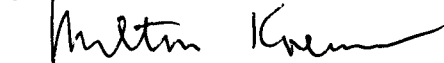
C. That pursuant to section 601-A of the Tax Law petitioners, Joseph Kozel and Nettie Kozel, were subject to the provisions of the New York State income tax law relating to minimum income tax.

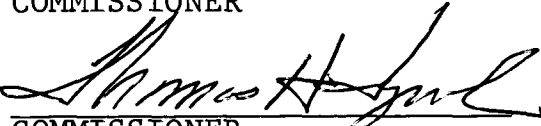
D. That the petition of Joseph Kozel and Nettie Kozel is denied and the Notice of Deficiency issued April 12, 1976 is sustained.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER