

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

James K. & Kathleen H. Lang :

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 Year 1969. :

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 31st day of August, 1979, he served the within notice of Decision by certified mail upon James K. & Kathleen H. Lang, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James K. & Kathleen H. Lang  
5 Beech La.  
Edison, NJ 08818

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  
31st day of August, 1979.

Mary Dominici

J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

James K. & Kathleen H. Lang  
5 Beech La.  
Edison, NJ 08818

Dear Mr. & Mrs. Lang:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JAMES K. LANG and KATHLEEN H. LANG : DECISION  
For Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1969.

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Petitioners, James F. Lang and Kathleen H. Lang, 5 Beech Lane, Edison, New Jersey 08817, 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 1969 (File No. 13804).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 10, 1978 at 1:15 P.M. Petitioner appeared pro se and for his wife, petitioner Kathleen H. Lang. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the days on which petitioner James K. Lang worked at his home in Edison, New Jersey, during 1969 constituted days worked outside New York State, for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, James K. Lang and Kathleen H. Lang, timely filed a New York State Income Tax Nonresident Return (Form IT-203) for 1969, on which they allocated salary income on the basis of days worked

within and without New York State. Petitioner James K. Lang reported a total of 221 working days, 122 of which were worked within New York State and 99 of which were worked without New York State at his home in New Jersey.

2. On September 25, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioners asserting additional personal income tax for 1969 of \$798.13, plus interest of \$29.41, less an overpayment shown on petitioner's tax return of \$597.54, for a net total due of \$230.00. Said Notice was issued on the grounds that James K. Lang's salary income was not allocable on the basis of days worked within and without New York State.

3. Petitioner James K. Lang was employed by Brooklyn College and was assigned as an instructor to its Department of Speech and Theater. Due to the lack of space, funds, equipment and facilities at Brooklyn College, petitioner alleges that he was requested to maintain laboratory and shop facilities at his home, where he was required to render his out-of-classroom duties.

4. The facilities at his home consisted of a variety of electronic, photographic, mechanical and laboratory equipment, which was purchased and maintained at his own expense.

5. Petitioner maintains that Brooklyn College scheduled his normal working time so as to provide for the performance of his out-of-class duties at his home in New Jersey. His duties were largely concerned with the creation and maintenance of laboratory and research-oriented facilities, as well as academic programs for the specific benefit of the college.

6. Petitioner contended that his home facilities were a condition of his employment.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner James K. Lang at his home in New Jersey during 1969 were performed there by reason of his own convenience and necessity, and not for the necessity of his employer. Accordingly, the days worked at his home in New Jersey are considered days worked in New York State for purposes of allocating income, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the petition of James K. Lang and Kathleen H. Lang is denied and the Notice of Deficiency issued September 25, 1972 for \$230.00 is sustained, together with such additional interest as may be lawfully owing.

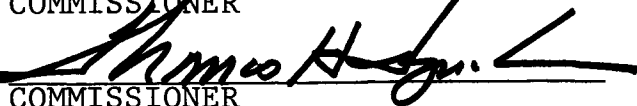
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER