

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Harry Caplan :

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 1967, 1969. :

State of New York

County of Albany

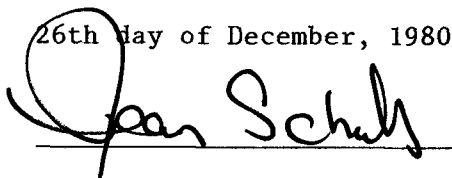
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of December, 1980, he served the within notice of Decision by certified mail upon Harry Caplan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

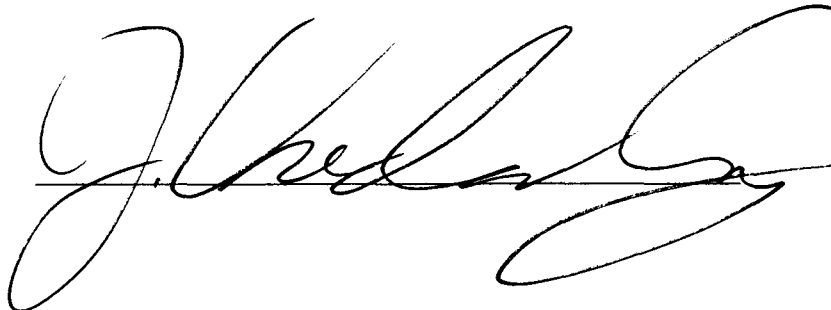
Harry Caplan  
c/o Dept. of Classics, 121 Goldwine Smith Hall  
Cornell University  
Ithaca, NY 14850

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  
26th day of December, 1980.

  
\_\_\_\_\_  
Jean Schulz

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
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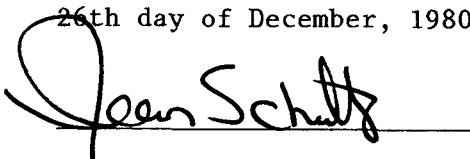
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of December, 1980, he served the within notice of Decision by certified mail upon Sanford H. Bolz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

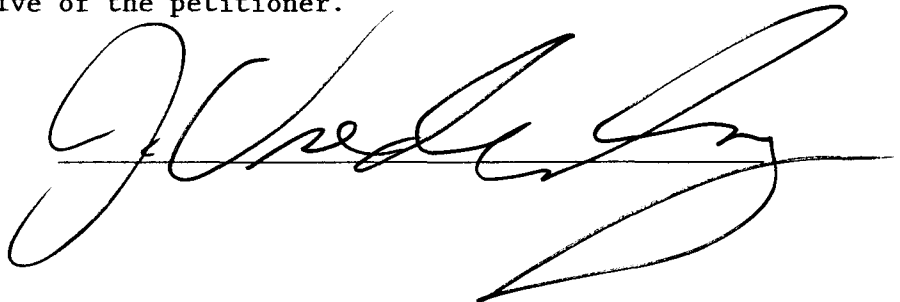
Mr. Sanford H. Bolz  
Bethlehem Terrace M-234  
Slingerlands, NY 12159

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  
26th day of December, 1980.

  
Jean Schutt



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

December 26, 1980

Harry Caplan  
c/o Dept. of Classics, 121 Goldwine Smith Hall  
Cornell University  
Ithaca, NY 14850

Dear Mr. Caplan:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Sanford H. Bolz  
Bethlehem Terrace M-234  
Slingerlands, NY 12159  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HARRY CAPLAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1967 and 1969.	:	

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Petitioner, Harry Caplan, c/o Department of Classics, 121 Goldwine Smith Hall, Cornell University, Ithaca, New York 14850, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1967 and 1969 (File No. 11330).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on March 19, 1980 at 1:00 P.M. Petitioner appeared by Sanford H. Bolz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

#### ISSUE

Whether petitioner was a resident individual of New York State for 1967 and 1969.

#### FINDINGS OF FACT

1. Petitioner, Harry Caplan, filed a Claim for Refund of Personal Income Tax for 1967 in the amount of \$1,167.15 and for 1969 in the amount of \$903.50.

2. On July 13, 1970, the Audit Division disallowed the claim in full on the grounds that petitioner was a domiciliary of New York and failed to establish that he had no permanent place of abode in New York, nor that he maintained a permanent place of abode elsewhere during the entire years at issue, and that he spent in the aggregate not more than thirty days of the taxable year in this State.

3. Petitioner was a professor at Cornell University for a period of forty-five years, a position he held until 1967 when he was retired by the school because of his age. During the forty-five years that he was employed at the University, his residence consisted of a furnished room in a private home, which he rented by the week.

4. Petitioner, upon his mandatory retirement from Cornell University in 1967, actively sought permanent teaching positions at various schools without New York State with the intention of establishing a new "abode". During 1967 and 1969, he obtained temporary positions at various schools with the hope that one of the positions would result in a permanent appointment.

5. The 1969 New York State Resident Income Tax Return which listed petitioner's home address as 121 Goldwin Smith Hall, Ithaca, New York, was not a "residence" or "home" but was petitioner's former Cornell office address, which he no longer occupied. This office was accorded to him as a courtesy by Cornell University to use as a continuing mailing address and to store his books pending his ultimate destination.

6. The type of residence maintained by petitioner during his tenure at Cornell University consisted of a room, which he rented on a week-to-week basis. The type of residence maintained by petitioner for 1967 and 1969, while temporarily employed by various universities without New York State,

also consisted of a room rented on a weekly basis or for a longer period of time. That petitioner's living accommodations within and without New York State were similar in all respects.

7. Petitioner conceded that he was domiciled in New York State during 1967 and 1969 and that he was a resident for tax purposes during 1967.

8. Petitioner failed to establish that after he returned to New York State in July, 1969, he spent in the aggregate less than thirty days in New York State.

CONCLUSIONS OF LAW

A. That any person domiciled in New York State is a resident for income tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements:

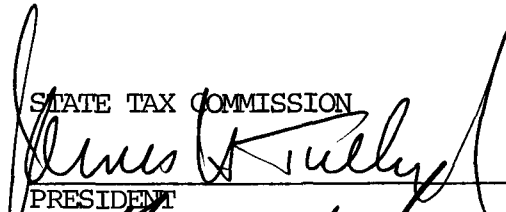

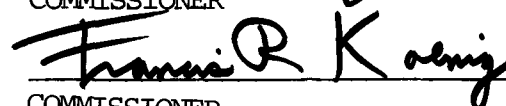
- (1) he maintains no permanent place of abode in this state during such year,
- (2) he maintains a permanent place of abode elsewhere during such entire year, and
- (3) he spends in the aggregate not more than 30 days of the taxable year in this State (20 NYCRR 102.2(b)).

B. That petitioner was not a nonresident for 1969 since he did not maintain a permanent place of abode outside New York State for the entire taxable year and since he did not establish that he spent in the aggregate less than thirty days in New York State in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2(b).

C. That the petition of Harry Caplan is denied, and the refund denial dated July 13, 1970 is sustained.

DATED: Albany, New York

DEC 26 1980

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 6th day of February, 1981, he served the within notice of Decision by certified mail upon Harry Caplan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry Caplan  
148 Rockefeller Hall  
Ithaca, NY 14850

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  
6th day of February, 1981.

Connie A. Hagelund

J. Vredenburg

TA 26 (9-79)

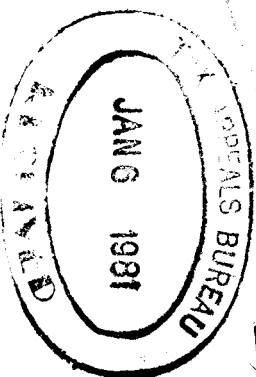
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

REASON FOR RETURN  
Unclaimed  
Addressee unknown  
Insufficient Address  
No such street  
No such office in state  
Do not remain in this envelope

Harry Caplan  
c/o Dept. of Classics, 121 Goldwine Smith Hall  
Cornell University  
Ithaca, NY 14850



ALWAYS USE  
ZIP CODE



B/A sent  
1-13-81  
JK