

Aleks KURGVEL
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19 June 1973

FINDINGS, COMMENTS and CORRECTIONS
to the
DECISION of the NEW YORK STATE TAX COMMISSION
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,
made in Albany, New York on March 5, 1973.

NOTE. I am not yet in the possession of the full transcript of the formal hearing held on December 14, 1972 in this matter. Therefore all the following is made on the basis of the Decision as it was sent to me.

A. FINDINGS OF FACT.

1. The facts mentioned under p. 1. are true. However, the reasons why the New York State combined income tax returns (IT-208) were used for Salme KURGVEL's tax returns before 1962 and later, were not mentioned. The fact of using those forms, and after 1962 even mentioning Aleks Kurgvel's name on them, can not be construed as an admission that Aleks Kurgvel considers himself a resident of New York. It should be pointed out that written on each of those forms, or attached to them, was a NOTE explaining that Aleks Kurgvel is a resident of Washington, D.C. The figures of the joint income, taken from the Federal Tax returns, were written on those forms for giving the authorities a possibility to check on the reality of the division of the deductions. The income tax bureau in Albany, N.Y. raised no objection to this practice and recognized my status of nonresident, as seen from the calculation of the corrections made by this bureau in the return for 1963, making changes in Salme Kurgvel's deductions. (See Voucher # 6352560, file # 3-953300. *(copy attached)*)

From the return for 1964 the above mentioned note became detached, and did not reach the return when mailed, ^{one day later}. A copy of it, with an explanatory letter was sent by me to Albany upon the request of the Income Tax Bureau on 19 July '65.

In my answers to the letters of the Income Tax Bureau dated 13 August and 15 September 1965, ~~and~~ the answers dated 19 August and 9 October 1965, I explained in length why I am considering myself a resident of Washington, D.C.. At this time I did not know yet the expression and the special status of a "resident individual". Nor was this term and status mentioned during the conferences I and my attorney, John F.B. MITCHELL, had with an auditor of the Income Tax Bureau Mrs. HERTZENDORF.

Mrs. Hertzendorf persuaded Mr. Mitchell that I shall have plenty of troubles if I won't agree to pay the little difference between the New York State and the District of Columbia personal income taxes, the latter being credited against the New York taxes. Since I was tired of this matter already, then I and Mrs. Salme Kurgvel accepted Mr. Mitchell's suggestion and we agreed to pay this difference

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DATE 2006

APRIL KURVEL.

CONCERNS 19 June '73

FINDINGS, COMMENTS & CORRECTIONS ...

The writing on the following four pages tries to give the reader a scant idea of the matter.

It is written by a tired man during the night hours, without any draft and therefore I must apologize for many mistakes and errors.

(4)

10/25 (10/61)

State of New York-Department of Taxation and Finance

INCOME TAX BUREAU, ALBANY ²⁵ NEW YORK

VOUCHER FOR INCOME TAX REFUND

Voucher Number 6852560

Adjusted Refund Resulting From Recomputation of Your 1963 Income Tax Return
85R-3 087-28-3640

*correctly
recomputed for
1963 JHC.*

Salme Kurguel
46-05-90 Street
Elmhurst 73, N. Y.

Date _____

If corresponding,
please refer to
this File No. 3-8533300

EXPLANATION OF REFUND ADJUSTMENT	AMOUNT
As a single return was filed by you (Husband's non-resident income was excluded and his exemption was not claimed), itemized deductions claimed are required to be apportioned and statutory credit is limited to \$12.50.	
COMPUTATION:	
New York income reported (\$ 4,911 x \$1361.00)	\$4911.00
Itemized deductions allowed (13,210.00)	505.27
Balance	\$4405.03
Exemptions	1200.00
New York taxable income	\$3205.03
Tax on above	\$88.20
Statutory credit	12.50
Personal income tax due	\$75.70
New York State tax withheld	<u>111.51</u>
REFUND PERSONAL INCOME TAX	\$35.81
NOTE:	
The refund claimed on your return for the year stated above is allowed to the extent indicated in this recomputation and the balance is denied. While the Income Tax Bureau will give consideration to any request for information in connection with this recomputation, <u>the Bureau can not make any adjustment of such recomputation after one year from this date unless a formal Application for Revision or Refund has been filed on Form IT-113 during such year.</u>	
THE ABOVE STATEMENT APPLIES ONLY TO 1959 AND PRIOR TAX YEARS.	
Audited By	Approved For Payment

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(FINDINGS, COMMENTS and CORRECTIONS. page 2.)

^{to the} New York State and District of Columbia taxes for 1952, 1953 and 1954. This sum was first calculated to be \$ 322.64. I ^{had} a money order drawn from Long Island City Savings bank for the New York State Income Tax Bureau. I sent it to my attorney, Mr. Mitchell with the clear instruction to forward it together with the information that we are paying this sum "under protest, and only because we are not able to waste any more money, time and energy in contesting this (Tax Bureau's) finding." This was on 25 March 1966. On 28 March, in the office of Mrs. Hertzendorf, the latter told Mr. Mitchell and me that something was wrong with the first calculation and the amount to be paid is \$ 354.64. Thus I wrote an extra personal check to cover the difference between the money order ^{of} the new amount. At the same meeting Mrs. HERTZENDORF prepared for me the "Claims for Resident tax credit" forms mentioned in p. 2 of the "Findings of Fact." Later the same day Mrs. HERTZENDORF telephoned me and said that a new assessment had been made and the new amount is 3 249.80 (the sum mentioned in p. 3 of the "Findings of Fact") Since I was already returning to Washington, D.C., ~~then~~ Mrs. Hertzendorf sent the money order and my check back to Mrs. Kurgvel and the latter in turn sent Mrs. Hertzendorf a new check for the right amount. Mr. Mitchell confirmed to me in writing that our protest was forwarded to Mrs. Hertzendorf, this means to the Income Tax Bureau.

On our 1965 return we included my salary in total New York income and claimed resident tax credit for income tax paid to the District of Columbia. This we did on the affirmation of Mrs Hertzendorf, ~~and~~ confirmed by the Statement of Audit Change issued by the Income Tax Bureau on 28 March 1966 (Point 3 of the "Findings"), ^{that this will be credited against the New York tax.}

The confrontation of point 3 of the "Findings of Fact" with the points 4 and 5 of the same document shows that the officials in the Income Tax Bureau do not know themselves what they are doing. First I was ascertained that the D.C. tax credit is allowed and then follow three letters reversing the first policy. The first reversal, not mentioned in the "Findings", was dated June 15, 1966. This reversal of policy put me in danger of losing the possibility of a refund from the District of Columbia tax authorities if the final decision would ^{be} that I am ~~a~~ domiciled ⁱⁿ New York and ~~not~~ ^{that} entitled to ^{the} credit for the taxes paid to the District. This I expressed in my letter of 2 November 1966. To clear the situation I asked for a formal conference in October (by my letter of 4 August 1966) .

At the end of November I still had ~~no~~ no formal conference and therefore I asked Certified Public Accountant Mr. Lawrence FREEMAN to represent me in this matter.

It took nearly one year until a preliminary hearing was ^{arranged} ~~presented~~ in which Mr. Freeman represented me. It took up to February 14, 1969 until the notice was sent that no agreement was reached at this hearing. Mr. Freeman had passed away before it arrived. Unfortunately, I have no transcript of the presentation Mr. Freeman made on my behalf on this preliminary hearing.

A formal hearing was ^{scheduled} ~~fixed~~ in this matter for ^{the} 24 September 1970. But this was again postponed and instead a calendar ^{meeting} ~~meeting~~ was held on 8 February 1972, to set a formal hearing. The formal hearing was finally held on 14 December 1972 and the decision on the basis of this hearing was signed on 5 March 1973.

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(FINDINGS, COMMENTS and CORRECTIONS. page 3)

To point 6 of the "Findings of Fact". I came in 1953 from Europe to Washington D.C. in the process of transfer of my job from Europe to Washington, without any break in my employment. Thus there was a change of domicile from Munich, Germany to Washington, D.C., U.S.A., without any establishment of a domicile in New York although my family lived there.

To point 7 of the "Findings of Fact". NOT the petitioners, but Salme Kurgvel alone leased an apartment in Long Island City, New York. This happened on October 1, 1952, when I was still in Germany and did not know anything yet of my transfer to the USA. I do not quite understand what means the part of the following sentence which I shall underline here: "In 1963, they purchased, as tenants by the entirety, a two family home in Elmhurst, New York." In this connection be it said that when we purchased this house, one of the apartments was rented out by the old owner. This tenant left because his old age a few months later, and we had already another tenant waiting to take the apartment. Thus, of this two family house only one apartment has been ^{used} by my wife, Salme Kurgvel and our son Rein Kurgvel.

Salme Kurgvel has worked for the First National City Bank of New York not since 1963, but since 1966. Prior to this time she worked first as a practical nurse and then as a clerk in an insurance company.

To point 8 of the "Finding of Fact". During the formal hearing and also during earlier hearings much emphasis has been given to the fact that I had no private bathroom in Washington, D.C. and therefore the room which I occupied there could not be taken as my domicile, and ^{my} real domicile is the house which we bought in Elmhurst. I consider this being a arbitrary and capricious finding. The houses in which I have lived during more than twenty years in Washington, have all been small houses in the sense that they were one family houses of formerly large families, (with many bedrooms and baths,) now occupied by the old couple whose children had started their own life. In order not to be quite alone in such a house these old couples take one or two tenants who are to their liking. Those tenants are treated like the members of the family. I have never had to wait when wanting to use a bath because if that closest to my room happened to be closed, I could always use another. Things are different in the apartment where my wife and our son live, because there is only one bathroom and in cases that I am visiting the family, we often have to "stand in line" for the bathroom. Therefore, referring to point 12 of the "Findings of Fact" the statement that "Aleks Kurgvel spent as many weekends as he possibly could at his home in New York City..." This apartment is NOT my home. It is simply the place where my loved people live, whom I want to visit, although I have there no room for myself, no real bed to sleep in, no bath where I do not need to consider the needs for two other people. In Washington I have in my room a real, comfortable bed, full privacy and free access to at least one unoccupied bathroom.

To points 9 and 10 of the "Findings of Fact". It is true that I voted for the President in New York in 1960. Perhaps this was a crime that I, domiciled in Washington, registered for voting and voted in New York. The need for such a "crime" was later abolished, the Washingtonians can vote for the President now at their home town and I have done this. I got my first driver's licence in Estonia in 1938. I have driven in many countries without accidents. But when I needed the licence for my work in Washington, D.C. and had gone through a thorough refresher course, I

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flunked on three road tests. Going thereafter on leave to New York, I went to an occasional driving school, took one driving lesson; explained which difficulties I had in Washington with the road tests. The leader of this school arranged that I could have taken the road test soon, and I passed, I got the licence. This was long before 1962. Practically I have not had a car of my own. For my work in Washington I had an official car available when needed. Now I don't need one and therefore I have not applied for a new licence.

To point 12 of the FINDINGS OF FACT". Concerning New York I am a nonresident because I do not come within the definition of a resident. Therefore I do not need to submit any proof of evidence that I had spent less than 30 days in New York during any of the years under consideration.

TO CONCLUSIONS OF LAW.

I disagree with the Conclusions of the Tax Commission:

1) New York has never been for me the domicile in the sense as this term has been explained in the New York State Tax forms and instructions. New York is for me not the place which I intend to be my permanent home, the place to which I intend to return whenever I may be absent. For me such a place has been Washington, D.C. For over twenty years, including the years 1962 - 1965. I not only want to return thereto when absent, but I must return there in order to earn the income of which New York States wants to collect the tax.

The facts that I sometimes before the years under consideration erred against some laws by taking the New York driver's licence and voter for the President of the United States, can not be construed as reason for declaring me domiciled in New York during 1962-1965.

The Income Tax authorities of Washington D.C., to whom I turned for information as whether I can have the tax refunded if these were paid to Washington D.C. by error, declared to me that they consider me a domicile of D.C.

The same do the finance men of my employer, deducting the D.C. tax from my salary.

2. The house which we bought in Elmhurst, N.Y. is not a permanent place of abode for me, there is ^{no} dwelling place permanently maintained by me or for me. My wife takes care of the mortgage payments and rent collection, and - allows me to sleep in the living room on a couch when I happen to visit there. My permanent place of abode in 1962-1965 was, and is still in Washington, D.C.

3. Thus, ^{by} being domiciled in Washington, D.C. ^{by} having my permanent place of abode there, and remaining there much more than 183 days during any taxable year, I am not a resident individual of New York.

Therefore I request that the Decision of the New York State Tax Commission of 5 March 1973 in this matter be annulled.

REVIEW of Aleks and Salma E. KURGVEL's NEW YORK STATE PERSONAL INCOME TAX PAYMENTS
and of the DEFICIENCY CLAIMS MADE BY THE TAX COMMISSION for 1962-1965.

#	DATE	ACTION	Year 1962		Year 1963		Year 1964		Year's 1962-64 summed up					
			Husband.	Wife	Husband	Wife	Husband.	Wife	Husband	Wife	Together	%	TOTAL	
01	14.04.63.	Paid	*	92.54										
02	06.02.64	Paid			*	75.76								
03	13.01.65	Paid							85.25					
04	Pr.25.03.66	Assessed Taxes D.C.Tax credited Deficiency	152.53		169.06		243.77		631.-- 565.36 115.64	207.--		322.64 ⁺		
05	28.03.66	Assessed deficiencies											354.64 ⁺⁺	
06	28.03.66	Reassessment D.C.Tax credited Previously paid Deficiency	171.31 152.53	125.31 92.54	183.45 169.06	126.82 75.70	325.95 243.77	115.69 88.25				226.67	22.13	249.30 ⁺⁺⁺
07	14.04.66	Paid taxes for 1965 (See entry # 0, on the next chart. These taxes were computed and paid according to the understanding that the D.C. Tax will be credited.)												
08	15.06.66	Credit for D.C. Taxes disallowed, thus Deficiency	152.53		169.06		243.77		565.36			63.02	633.38	
09	13.11.66	Deficiency assessed	152.53		169.06		243.77		565.36			82.11	647.47	

- NOTES: * : A Note was written on, or attached to the return, stating that Aleks Kurgvel is a resident of Washington, D.C.
 * : Salma Kurgvel's tax was reported \$ 35.50. The Tax authorities recognized the non-resident status of her husband, but changed the division of the deductions between the spouses, amounting Salma Kurgvel's tax to \$ 75.70
 + : This assessment was made by Mrs. HERTZENDORF and was sent to our attorney John F. D. MITCHELL, A. and S. KURGVELS agreed to pay the sum under protest, not recognizing that A. Kurgvel is a resident of New York. We thought that the peace of our mind costs more than this amount of money, and we believed that by paying this sum the matter will be closed.
 ++ : This assessment was made by Mrs. HERTZENDORF in hurry in presence of Mr. MITCHELL and Mr. KURGVEL, she saying that she had made a mistake in the calculations. A. Kurgvel agreed with the change and paid on the spot under the same reasoning as given above, under protest. However, the check were returned the same day, to be replaced.
 +++ : Mrs. HERTZENDORF who sent back the check for \$ 354.64 apologized for an error and asked to send a check for \$ 249.30 This was done.

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CONTINUATION of the REVIEW of Aleks and Salme KURJVELS' NEW YORK STATE PERSONAL INCOME TAX PAYMENTS
AND THE DEFICIENCY CLAIMS made by the TAX COMMISSION for 1962-1965.

#	DATE	ACTION	Year 1962		Year 1963		Year 1964		Year 1965		TOTALS
			Husband.	Wife	Husband.	Wife	Husband.	Wife	Husband.	Wife..	
10	14.04.66	Paid	.....	.....	.....	.....	.....	.....	31.10 [#]	119.40	
11	14.11.66	Deficiency assessed	152.53		169.06		243.77		-		565.36
		Interests	32.78		26.19		23.14				82.11
		Sum	185.31		195.23		266.91				647.47
12	19.12.66	Deficiency assessed	.....	.....	.....	.....	.....	.....	138.22		
		Interests	.....	.....	.....	.....	.....	.....	7.65		
		Sum	.....	.....	.....	.....	.....	.....	195.87		
13	05.03.73	DECISION:	The notices of deficiency issued Nov. 14, 1966, and Dec. 19, 1966 are sustained.								
14	02.06.73	Tax due	152.53		169.06		243.77		188.22		753.58
		Interests to 15 Jun 73	93.05		92.98		119.45		80.93		386.41
		TOTAL	245.57		262.04		363.22		269.15		1,139.92

NOTE: * The Income Tax paid to the District of Columbia, \$ 138.22, was deducted as advised by Mrs. HERTZENDORF of the New York State Tax Commission.

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