Vernon B. Lang and Marion C. Lang[1]

v.

Department of Revenue Administration

Docket No.: 19979-04ID

DECISION

The "Taxpayers" appeal, pursuant to RSA 21-J:28-b, the department of revenue administration's ("DRA") assessment of the following RSA ch. 77 interest and dividend taxes, RSA 21-J:28 interest on taxes paid after due date, RSA 21-J:31 penalty for failure to timely file ("FTF") returns and RSA 21-J:33 penalty for failure to timely pay ("FTP") taxes.

TAX PERIOD	TAX	INTEREST	FTP	FTF	AMOUNT DUE
Dec-96	$65.86	$41.46		$16.46	$123.78
Dec-97	$194.97	$95.70		$48.74	$339.41
Dec-98	$314.00	$109.53		$79.00	$502.53
Dec-99	$264.35	$65.48		$66.09	$395.92
Dec-00	$527.06	$94.91		$131.77	$753.74
Dec-01	$496.80	$37.87	$49.68	$124.20	$708.55
TOTAL	$1,863.04	$444.95	$49.68	$466.26	$2,823.93

[1] Based on the Taxpayers' filing of joint interest and dividend tax returns and the board's findings relative to Marion C. Lang's tax liability, as discussed in detail in the board's rulings, the board has added Marion C. Lang to the docket's caption. Consequently, the decision refers to Vernon B. and Marion C. Lang collectively as "Taxpayers."

The Taxpayers argued they were entitled to abatement of the taxes, interest and penalties because:

1) Vernon Lang is not a resident of New Hampshire;

2) the residency definition in RSA 21:6 sets a very high bar and all the actions must occur in this state to the exclusion of all other states;

3) Vernon Lang has a long established pattern of family history and land ownership in Crown Point, New York ("Crown Point") and continues to farm there on a part-time basis when not working in New Hampshire;

4) Vernon Lang has been registered to vote in New York State and has done jury duty several times there;

5) Vernon Lang has an in-state New York hunting and fishing license and has for many years retained a New York license to carry a pistol; and

6) the legislature has the authority, not the DRA through its rules, to define residency; thus, RSA 21:6 is controlling rather than the DRA's rules.

The DRA argued it was correct in assessing the tax, interest and penalties because:

1) Vernon Lang's residence is in Weare, New Hampshire when all his daily activities are considered including: place of employment, domicile with immediate family members, registration of automobiles, New Hampshire driver's license, banking, filing of federal income tax returns and the fact that the majority of his physical presence is in New Hampshire;

2) all Vernon Lang's actions indicate his intent to have New Hampshire as his primary residence; and

3) Vernon Lang's actions and continued assertion of New York residency supports a finding of intentional disregard of the law, warranting an assessment of penalties and the request for attorney's fees pursuant to RSA 21-J:28-b, VI.

Board's Rulings

Taxpayers may appeal the final decision of the DRA within 30 days of such notice to either the board of tax and land appeals or the superior court which "shall hear the appeal de novo." RSA 21-J:28-b, IV. Further, TAX 209.04 establishes that the taxpayer "shall have the burden to prove the DRA erred in its decision."

In this case, while we find the Taxpayers did not prevail in proving the DRA erred, the board's de novo review results in determining that Vernon and Marion Lang are jointly liable for the taxes, interest and penalties summarized on p. 1 of the Decision. The entire focus of both the DRA's assertion of interest and dividend tax liability and Vernon Lang's arguments, both before the DRA and the board, was whether he was a resident of either New Hampshire or New York. The board finds this myopic focus misses an initial determination that should have been explored and established of whether Vernon Lang <u>and</u> <u>Marion</u> <u>Lang</u> had joint or separate tax liability in New Hampshire.

After receiving information from the Internal Revenue Administration about the Langs' federal income tax return, the DRA's Discovery Bureau contacted Vernon Lang and Marion Lang as to their potential interest and dividend tax liability. The Langs then jointly filed their 1996 through 2001 interest and dividend tax returns. (DRA's April 5, 2004 final order ("Final Order") and DRA Exhibits G through L). All the returns were filed jointly as noted by both Vernon and Marion Lang's names appearing on the forms, by their designation of it being a joint return and by their deduction of $4,800 on line 6, page 2 of the DRA's DP-10 form indicating a

joint deduction rather than an individual $2,400 deduction. See also RSA 77:18, IV (b). Testimony at the hearing by Vernon Lang indicated that most, but not all, of the investments that generated the interest and dividend were jointly owned by Vernon and Marion Lang; however, Vernon Lang also testified that some of the investments were solely in Marion Lang's name.

Throughout the DRA review and appeal process, both the DRA and Vernon Lang failed to focus on the important factor of Marion Lang's tax liability. Only in the DRA's closing statements was it argued that, even if the board finds Vernon Lang is a resident of New York, the Taxpayers (Vernon and Marion Lang) failed in their burden to show to what extent Marion Lang was liable for interest and dividend taxes as a resident of New Hampshire and under the provisions of Rev 906.02(d) which provides for the resident spouse to be liable to file a tax return on 50% of jointly held investments. The board has reviewed the extensive file that was transferred from the DRA with the Taxpayers' appeal and finds subsequent to the Discovery Bureau's referral of the issue to the Audit Division, all communications from both the Taxpayers to the DRA and vice versa were addressed solely to Mr. Vernon Lang and addressed the singular issue of his residency. Despite there being ample opportunity by the DRA for the taxpayer of record issue to be corrected (see e.g., June 18, 2003 memo from Mark J. Bennett, Hearings Officer of the Hearings Bureau to Maurice Gilbert, Director of Audit Division seeking a "dispositive motion" or a "case report" identifying the "name of record of the taxpayer" and the Final Order which identifies the taxpayer of record as Vernon B. Lang (p. 1)), no discussion apparently occurred or is documented as to the significant tax liability due to the uncontested fact that Marion Lang is a resident of New Hampshire and was liable for some amount in excess of 50% of the interest and dividend taxes because of her joint or sole ownership interest in the investments. While Vernon Lang's residency issue is certainly a significant factor in the

determination of the balance of the liability, there should have been no contest as to Marion Lang's tax liability. The board believes if that proper focus had occurred, perhaps more fruitful discussions could have occurred between the DRA and the Langs and the case would have had a higher likelihood of being resolved without additional hearings.

Based on Vernon Lang's testimony as to Marion Lang's joint ownership in many of the investments and sole ownership in some of the investments, the board finds Marion Lang is liable for a significant portion of the tax liability identified on p. 1 of this decision. The balance of the board's decision will address Vernon Lang's residency issue relative to any tax liability that Marion Lang would not be solely liable for. Also the last section will address the DRA's request to reinstate the previously abated FTP penalties and its request for attorney's fees pursuant to RSA 21-J:28-b, VI (Supp. 2003).

Residency Issue

The crux of Vernon Lang's argument is that he is not liable for payment of any interest and dividend taxes for the years in question because he was not a resident of New Hampshire, but rather a resident of the State of New York. As discussed above, this issue relates only to the residual amount of the total that Marion Lang is not liable for.

Mr. Lang asserts that because the legislature did not define the terms "inhabitants" or "residents" in RSA ch. 77, the general definition of those terms in RSA 21:6 controls rather than the definition contained in the DRA's rules at Rev 901.10 and Rev 902.01. We disagree for the following reasons.

RSA 77:3, I, (a) states that income received from interest and dividends by "[i]ndividuals who are inhabitants or residents of this state for any part of the taxable year . . ." is taxable under

this chapter. RSA ch. 77, however, provides no statutory definition for "inhabitants" or "residents."

The DRA, relying upon its statutory rule making authority contained in RSA 21-J:13, I and RSA 77:18, I, promulgated rules Rev 901.10 and Rev 902.01 defining the words "inhabitants" and "residents" and the factors to be considered in determining residency.

Rev 901.10 "Inhabitant or resident" Defined.

"Inhabitant or resident", as used in RSA 77:3, I, means any person who:

(a) Occupies a dwelling within the state;

(b) Has an intent to spend a greater percentage of time in this state than in other states; and

(c) Manifests that intent by establishing or maintaining an ongoing physical presence in accordance with Rev 902.01.

Rev 902.01 Establishment of Intent.

An individual's intent to establish an ongoing physical presence within this state which is not transitory in nature, shall be evidenced by:

(a) Maintaining a home or other primary living quarters in this state;

(b) Spending a greater percentage of time in this state than in any other state;

(c) Having family living with them in this state or in close proximity to them;

(d) Advising any state or local agency for any purpose that they consider themselves a resident of this state;

(e) Being employed or conducting business activity within the state or at a place to which the person can readily commute; or

(f) Registering to vote in this state.

After reviewing all the evidence submitted and the statutory and rule definitions relative to residency, the board concludes the DRA's rules are consistent with the general statutory construction definition of residency contained in RSA 21:6; and thus, both the statutory definition

and the rule definition can be applied to the facts in this case. We disagree with Mr. Lang's strained reading of RSA 21:6 that 100% of a person's actions must take place in New Hampshire for residency to occur. Obviously, many people who are residents of New Hampshire have other dwellings outside the state for significant periods of time during the year and yet through a consideration of all their actions can claim residency in New Hampshire. Mr. Lang's assertion that all actions must occur within one state to the exclusion of any other state defies the practical reality of today's mobile society. The DRA's rules detail the various factors to be considered and weighed in determining an individual's "current intent to designate that place of abode as his principle place of physical presence for the indefinite future to the exclusion of all others." (See RSA 21:6). We do not find the DRA's rules contrary to the general statutory definition in RSA 21:6, as Vernon Lang asserts. Rather, the rules facilitate the implementation of the DRA's authority to administer RSA ch. 77 and clarify the general residency definition of RSA 21:6.[2] Further, the DRA's rules relating to determining residency for interest and dividend taxation have been in effect since the early 1980s, were adopted pursuant to the process outlined in RSA ch. 541-A, have not been overturned by any challenge in court and, thus, "have the force of law . . . ." RSA 541-A:22, II. Consequently, the board concludes that both the statutory definition in RSA 21:6 and the DRA's residency rules are in concert and the details of the DRA's rules apply to the facts of this case.

There is no question Mr. Lang has two clearly defined circles of daily actions that must be looked to in considering residency. On one hand, as Mr. Lang testified, he was born and raised in Crown Point, with his family and himself owning significant farm and woodland acreage there for many generations. Mr. Lang has for many years and to date, been a registered voter in Crown

[2] The administrative procedure statute at RSA 541-A:1, XV defines rule: "'Rule' means each regulation, standard or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency . . . ."

Point and has at times been drawn for jury duty in Essex County, New York. Mr. Lang also provided documentation that he has for years been granted an "in-state" hunting license in the State of New York and has, since 1965, had a license from the State of New York to carry a pistol. Mr. Lang testified that on every available day that he is not engaged in his federal job in Concord, New Hampshire with the United States Fish and Wildlife Service, he operates the family acreage in Crown Point as a for-profit hay operation. The house that he occupies while in New York is heated with wood only and in the winter months, upon return to New Hampshire, the plumbing must be drained to avoid freezing. The United States Postal Service mail relative to the farming operation and the ownership and taxation of the New York property is received at the Crown Point address.

On the other hand, Vernon Lang owns a residence in Weare, New Hampshire jointly with his wife and has been employed by the United States Fish and Wildlife Service in an office in Concord, New Hampshire for the past 31 years. His wife and two children claim residency in New Hampshire and his two children have attended New Hampshire public schools. Mr. Lang registers all of his motor vehicles in New Hampshire and insures them through New Hampshire insurance companies. Mr. Lang and his wife file joint federal income tax returns with Weare, New Hampshire listed as their residence. He banks and receives credit from New Hampshire financial institutions. All United States Postal Service mail, other than some relative to the New York farm, is received in New Hampshire. According to Mr. Lang's own calculation of time, he spends 55% of his time living and working in New Hampshire.

In applying the above facts to RSA 21:6 and the above-cited DRA rules, the board concludes that Vernon Lang has established a clear intent to reside in New Hampshire and has

done so for the past 31 years. The following paragraphs make specific findings relative to Mr. Lang's actions and the factors the DRA's rules detail for residency consideration.

> **Rev 902.01** "An individual's intent to establish an ongoing physical presence within this state . . . shall be evidenced by: (a) Maintaining a home or other primary living quarters in this state; . . . (c) Having family living with them in this state or in close proximity to them; . . . ."

Vernon Lang has maintained a home with his wife and two children in Weare, New Hampshire where they reside on a day-to-day basis and where his children have attended public schools. Due to the fact Mr. Lang emphasized that the house in Weare does not have a woodshed, the board concludes the Weare house has a continual, self-operating central heating system that allows him and his family to leave the Weare home and travel to the Crown Point properties on weekends. The Crown Point dwelling has only a wood heating system necessitating weekly draining or winterizing of the plumbing when returning to Weare each weekend during the winter. This indicates the Crown Point house is a more secondary living quarter rather than a "primary living quarter" as referenced in Rev 902.01(a). Despite Vernon Lang's historical family roots, his real estate holdings and his haying operation in New York, the board finds they are secondary to his ongoing physical presence in New Hampshire as exhibited by the actions noted above.

Vernon Lang receives most of his mail at his Weare address with the exception of some farm or tax bills related to the Crown Point properties. He banks (both depositing his pay check and receiving credit) at New Hampshire financial institutions in the Weare area. He has registered and insured his motor vehicles in New Hampshire.

All of these activities support the conclusion that the Weare house is the "primary living quarters" for Vernon Lang.

> **Rev 902.01** "An individual's intent to establish an ongoing physical presence within this state . . . shall be evidenced by: (b) Spending a greater percentage of time in this state than in any other state; . . . ."

Vernon Lang admits to spending a greater percentage of his time in New Hampshire (55%) living with his family and in his employ than he does in New York. While the board has no reason to disbelieve his rigorous self-imposed commuting and farming schedules (all weekends, vacation days, holidays and every other Friday), the time spent with his family and his job in New Hampshire is a "greater percentage" than his New York time.

> **Rev 902.01** "An individual's intent to establish an ongoing physical presence within this state . . . shall be evidenced by: (d) Advising any state or local agency for any purpose that they consider themselves a resident of this state; . . . ."

Mr. Lang has for decades applied for and received a New Hampshire driver's license. The application for such license (renewed every four or five years during the relevant time period) contains an affirmation of residency and notice that "as a resident, you may be liable for interest and dividends tax (RSA 77)." For the years in question, Mr. Lang had checked the residency box on the application asserting to the New Hampshire Division of Motor Vehicles that he was a New Hampshire resident. (DRA Exhibits E and F). Mr. Lang has also registered his motor vehicles for many years in New Hampshire after obtaining "a permit for registration from the city or town [Weare] wherein he resides." RSA 261:148.

Vernon Lang has filed his federal income tax returns utilizing his Weare address. The federal tax return reflects both his income earned in his position with United States Fish and Wildlife Service in Concord, New Hampshire and his farm income in Crown Point, New York. These returns not only indicate his "home address" as Weare, New Hampshire but they also indicate that his primary source of income is with the United States Fish and Wildlife Service in

Concord, New Hampshire while the profit from the New York hay operation is a very secondary source of income for the Langs.

These activities and documents are examples of where Vernon Lang has "advised" or represented his residence to three levels of government as being Weare, New Hampshire.

However, at odds with this conclusion is the evidence submitted by Mr. Lang of his New York Resident Sporting License applications for four years (1997, 1998, 2000 and 2001) and his New York license to carry a pistol. The board gives little weight to these documents as evidence of his residency because: 1) the Sporting License applications appear to have been granted based on him listing his New York address and telephone number and having a New York Sportsman Education Certificate (no work telephone number is provided nor is a New York motor vehicle identification number or license provided despite the form requesting such information); and 2) the pistol permit, obtained in 1965, has no renewal requirements and, thus, is of little probative value for the appeal years some 35 years later.

> **Rev 902.01** "An individual's intent to establish an ongoing physical presence within this state . . . shall be evidenced by: (e) Being employed or conducting business activity within the state or at a place to which the person can readily commute; . . . ."

As noted earlier, Vernon Lang is employed with the United States Fish and Wildlife Service in Concord, New Hampshire and has his other "business activity" at his farm in Crown Point. However, the 150 mile and three hour plus "commute" from Weare, New Hampshire to Crown Point, New York does not appear to be what the plain meaning of the term "readily commute" in Rev 902.01(e) envisions.

> **Rev 902.01** "An individual's intent to establish an ongoing physical presence within this state . . . shall be evidenced by: (f) Registering to vote in this state."

Vernon Lang is registered to vote in New York and, as a consequence, has served on jury duty in New York. On its face, this would be some evidence of New York residency. However, the board has reviewed the following New York statutes relative to the residency requirements of voter registration contained in N.Y. Election Laws § Article 5-104.

> § 5-104. Qualifications of voters; residence, gaining or losing.
>
> 1. For the purpose of registering and voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any institution of learning; nor while kept at any welfare institution, asylum or other institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.
>
> 2. In determining a voter's qualification to register and vote, the board to which such application is made shall consider, in addition to the applicant's expressed intent, his conduct and all attendant surrounding circumstances relating thereto. The board taking such registration may consider the applicant's financial independence, business pursuits, employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse and children, if any, leaseholds, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, and other such factors that it may reasonably deem necessary to determine the qualification of an applicant to vote in an election district within its jurisdiction. The decision of a board to which such application is made shall be presumptive evidence of a person's residence for voting purposes.

While certainly the board has little experience in reading and applying New York law, a plain reading of the above-cited statute would raise a serious question as to whether a current review by the appropriate New York officials of all Mr. Lang's actions, as presented in this appeal, would warrant continued voter registration in New York. See Every v. Supervisor of Checklist, 124 N.H. 824 (1984). Consequently, the board gives little weight to the fact that Mr. Lang has maintained his voter registration in New York in determining his residency for this appeal.

In addition to all of the reasons noted above why we find Mr. Lang has established "an ongoing physical presence within this state . . .," we find a couple additional inconsistencies in his assertion that he is a resident of New York. First, if indeed Vernon Lang is and has been a resident of New York, why has he not been liable for and filed a New York personal income tax return pursuant to Article 22 of the New York Personal Income Tax statutes. Mr. Lang can't have it both ways. If indeed he believes he is a resident of New York, he should have filed his personal income tax with New York. But he never has filed any New York return, nor, as he testified, has he ever sought any advice as to whether he should file either in New York or New Hampshire. Prior to being "discovered" by the DRA through information supplied it by the Internal Revenue Service, he had never filed any New Hampshire interest and dividend tax returns. At some point, Vernon Lang has to decide where he will fulfill his constitutional responsibility to contribute his share, through taxes, in support of the protection provided by government. Part I, Article 12 of the New Hampshire Constitution. Another inconsistency is contained in his Schedule F (Profit or Loss From Farming) form (and his testimony regarding same) submitted with his federal income tax return where he deducts significant car mileage expenses for commuting from his Weare, New Hampshire resident to his Crown Point farm. If indeed he is a resident in Crown Point, one must ask the question, why such mileage deductions are appropriate from his "nonresidential" property in Weare, New Hampshire.

In conclusion, the board finds Mr. Lang's actions when considered as a whole, establish residency in New Hampshire and not New York. To conclude otherwise would be to ignore the fact that he lives with his immediate family in New Hampshire, is employed in New Hampshire, spends the majority of his time in New Hampshire, has a motor vehicle license in New Hampshire, registers and insures cars in New Hampshire, banks in New Hampshire, files federal

income tax returns from New Hampshire and the other myriad of daily activities that amount to the establishment of residency in New Hampshire. All these activities coupled with the fact that Mr. Lang has never filed a New York personal income tax return while continuing to vote and obtain an in-state hunting license in New York leads the board to wonder if his "residency" activities in both states are intended to benefit from the privileges that result from residency in either state without incurring the concomitant tax liabilities.

Penalties and the DRA's Request for Attorney's Fees

For the years in question RSA 21-J:31 involves a 5% penalty of the tax when a taxpayer fails to timely file the return (FTF Penalty).

Vernon Lang agreed at the hearing that if he was found liable for the interest and dividend taxes then he did not contest the FTF Penalties. Because the board has found that collectively Marion and Vernon Lang are liable for interest and dividend taxes, the board finds the DRA's assessment of the FTF Penalties are appropriate.

For tax years 1996 through 2000, RSA 21-J:33 provided a 10% penalty for failure to timely pay (FTP Penalty) if the lack of payment was due to "willful neglect or intentional disregard of law or rules . . . ." The DRA initially assessed the FTP Penalties but the DRA's Final Order abated them for tax years 1996 through 2000. However, the DRA continued to assess the FTP Penalty for tax year 2001 due to amendments to RSA 21-J:33, I for that year. At the hearing, however, the DRA requested a reinstatement of the abated and refunded FTP Penalties ($268.45, see DRA Exhibit B), because it now determined the Langs' actions did amount to "willful neglect or intentional disregard of the laws or rules."

Also at the hearing, the DRA requested an award of attorney's fees pursuant to RSA 21-J:28-b, VI (Supp. 2003) which provides for the award of such costs "provided the prevailing party shows substantially unjustified actions."

The board denies the DRA's requests for both the FTP Penalties and the request for attorney's fees for the following reasons.

As noted earlier, the board finds the DRA's assessment, administration and defense of the interest and dividend taxes was focused solely on addressing the residency issue of Vernon Lang. It is uncontested that Marion Lang is a resident of New Hampshire and, based on her joint and, in some cases, sole ownership of the various investments, is liable for the majority of the interest and dividend taxes. However, neither the DRA nor the Langs identified the magnitude of Marion Lang's tax liability but rather focused on Vernon Lang's residency challenge. The board believes that if the administration and assessment of the tax had established the amount that Marion Lang was clearly liable for, the remaining question of the tax liability relative to Vernon Lang's residency issue would have been less significant and perhaps resolution could have been achieved.

While the DRA did, during the hearing, argue that an alternate basis for denying the appeal was that the Taxpayers failed to establish the tax liability for Marion Lang, the DRA also failed to provide a basis for why the FTP Penalty and attorney's fees are justified based on Marion Lang's uncontested liability. In short, because the board finds the identification of the Taxpayers liability for the interest and dividend taxes was not managed properly by the DRA and it did not present any evidence as to <u>Marion Lang's</u> basis for late payment, assessing the FTP Penalty and attorney's fees would be inappropriate. While the board has found that Vernon Lang's actions appear to raise the question of tax avoidance, the focus of this appeal should have

been on the joint tax liability of Vernon and Marion Lang and not solely on Vernon Lang's residency question. The legislature in providing a de novo appeal to the board or the superior court in RSA 21-J:28-b anticipates a fresh look at the entire assessment of the tax by the DRA and the reasonableness of the Taxpayers' appeal. Here, while we find the Taxpayers failed in their burden for a number of reasons to show they were not liable for the taxes, the board also finds the DRA's administration and focus of the tax assessment could have been better handled to identify and address the respective tax liabilities of Vernon and Marion Lang.

The DRA submitted 47 requests for findings of fact and rulings of law. The board declines to separately rule on the specific requests because: 1) they define "Taxpayer" as Vernon B. Lang, while the board has found in its decision the "Taxpayers" to be Vernon B. and Marion C. Lang; and 2) the board has in its decision addressed all the pertinent issues raised in the DRA's requests.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Vernon B. and Marion C. Lang, 11 Blake Road, Weare, New Hampshire 03281, Taxpayers; and John Hayes, Esq., Department of Revenue Administration, 45 Chenell Drive, Concord, New Hampshire 03302, counsel for the DRA.

Date: November 24, 2004

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Anne M. Stelmach, Deputy Clerk