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MEMORANDUM

Income Tax Determinations
Feffer, Melvin & Edith
A-2

TO: The State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of Melvin and Edith Feffer for a Re-determination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the Year 1961

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on October 3, 1967. The appearances and the exhibits produced were as shown in the stenographic minutes submitted herewith.

The taxpayer filed a nonresident income tax return for the year 1961 in which he reported salary income claimed to have been earned within and without the State in the amount of \$10,093.64 which he allocated on the basis of 250 work days during the year of which 88 were days that he was required to work without the State of New York. Of the 88 days, 68 were days on which he worked at his New Jersey home and 20 were days worked at a hospital in Massachusetts.

A notice of deficiency and statement of audit changes were issued on April 13, 1965 disallowing the allocation on the basis that apportionment of income on the basis of days worked in a taxpayer's personal residence is not permitted unless the work is expressly required to be performed outside of New York State by taxpayer's employer. Personal income tax and interest liability for 1961 was determined to be in the sum of \$170.94.

The taxpayer is a professor of psychology and the Director of Clinical Training in the Department of Psychology, Ferkauf Graduate School, Yeshiva University. He was provided an office at the University. The school also had a library. These facilities were available to the taxpayer during the times that he worked at home. The taxpayer contended that he could not perform his duties at the University because of the lack of facilities for his library and research materials and that the facilities furnished by the University were too noisy and that he was subject to too many interruptions there. The work performed at home by the taxpayer consisted of analyzing research data, writing up the results of such analysis and conferring with students.

The taxpayer worked 20 days at a hospital in Worcester, Massachusetts where he was engaged in research as part of his duties for his employer. The hospital in Massachusetts was a proper place for the conduct of his research.

It is my opinion that the taxpayers are not entitled to an allocation of income for work performed at home on 68 days since such work does not constitute services rendered without the State of New York in accordance with the provisions of Section 632(e), Article 22 of the Tax Law and that the work was done at home primarily for the taxpayer's greater convenience in accordance with decisions of Burke v. Braselini, et al., 10 A D 2d 694, and Morehouse v. Murray, 10 A D 2d 764. The taxpayers, however, are entitled to an allocation for work performed in Massachusetts on 20 days.

For the reasons stated above, I recommend that the decision of the State Tax Commission modifying the notice of deficiency by reducing it by the amount of \$43.20 and otherwise denying the taxpayers' petition be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:rlp

Enc.

December 11, 1967

12-15-67

/s/

A. B. MANLEY

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION :
OF :
MELVIN AND EDITH FEFFER :
FOR A REDETERMINATION OF A DEFICIENCY :
OR FOR REFUND OF PERSONAL INCOME TAXES :
UNDER ARTICLE 22 OF THE TAX LAW FOR :
THE YEAR 1961. :

The taxpayers having filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on October 3, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer, Melvin Feffer, appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a nonresident income tax return for the year 1961 in which they reported salary income claimed to have been earned within and without the State in the amount of \$10,093.64 which was allocated on the basis of 250 work days of which 88 were days on which the taxpayer, Melvin Feffer, was required to work without the State of New York.

(2) That a notice of deficiency and statement of audit changes were issued on April 13, 1965 disallowing the allocation on the basis that apportionment of income on the basis of days worked in a taxpayer's personal New Jersey residence is not permitted unless the work is expressly required to be performed outside of New York State by the taxpayer's employer; that the taxpayer's

personal income tax and interest due was determined to be in the sum of \$170.94.

(3) That the taxpayer, Melvin Feffer, is a professor of psychology and the director of clinical training in the Department of Psychology, Ferkauf Graduate School, Yeshiva University; that his duties consisted of teaching and supervising students, administrative functions, evaluating internships for students, evaluating research facilities, and research.

(4) That the taxpayer worked 20 days in Worcester, Massachusetts where he was engaged in research at a hospital located there; that the research was conducted as part of his duties in behalf of his employer; that it was necessary for the taxpayer to work at the hospital located in Worcester, Massachusetts for the purpose of such research.

(5) That the taxpayer was provided an office at the University; that the University also had a library which was available for use by the taxpayer; that these facilities were available to the taxpayer during the times that he worked at his New Jersey home; that the taxpayer worked at home 63 days during the year; that the taxpayer was not required by his employer to work at home; that the work performed at home by the taxpayer consisted of analyzing the research data, writing up the results of such analysis and conferring with students.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

RESIDES:

(A) That there was no necessary ingredient required by the contract of employment, by the nature of the services performed and the formulation of judgments which necessitated the New Jersey home of the taxpayer as the locus for the performance of the

taxpayer's services; that such services performed in New Jersey could have been performed at Yeshiva University.

(B) That the State Tax Commission properly disallowed any allocation of income outside of the State for services performed by the taxpayer at his New Jersey home.

(C) That the taxpayers, however, are entitled to an allocation of income for services performed outside the State on 20 days in the Massachusetts hospital since it was substantiated that work was required to be performed 20 days there as part of the duties of the taxpayer, Melvin Paffer, for Yeshiva University.

(D) That the salary income of the taxpayers is allocated as follows:

		<u>SALARY</u>		<u>Salary earned in New York State</u>
New York workdays	230			
<u>Total workdays</u>	<u>290</u>	X	\$10,093.64	= \$9,286.14

(E) That the taxpayer's New York income is recomputed as follows:

Corrected New York income		\$9,286.14
Standard deduction (10% of income)		928.61
Balance		<u>\$8,357.53</u>
Exemptions		2,500.00
Taxable income		<u>5,857.53</u>
Tax on income	\$207.83	
Statutory credits	25.00	
New York tax	<u>182.83</u>	
Tax previously stated	72.62	
Personal income tax due	<u>\$185.25</u>	
Interest computed to	19.48	
April 13, 1965		
Total Taxes and Interest	<u>\$127.73</u>	

(F) That the notice of deficiency and statement of audit changes (File No. 1-6708452) are modified by cancelling the additional income tax and interest due for the year 1961 to the extent of \$43.20; that the taxpayer's 1961 income tax and

interest computed to April 13, 1965, the date of the notice of deficiency in the modified amount of \$127.76 is correct; that the notice of deficiency and statement of audit changes as modified do not include any tax or other charges which could not be lawfully demanded; that the taxpayers' petition for a redetermination of a deficiency or for refund of personal income taxes as modified be and the same is hereby denied.

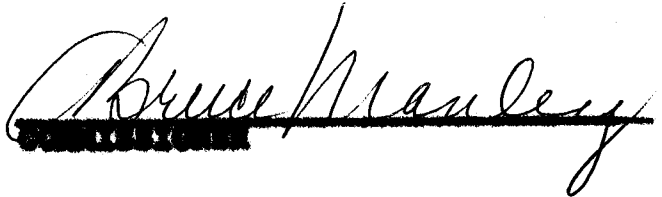
Dated: Albany, New York this 17th day of January, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT


COMMISSIONER

COMMISSIONER