

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Karl F. & Ruth Frank :
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 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

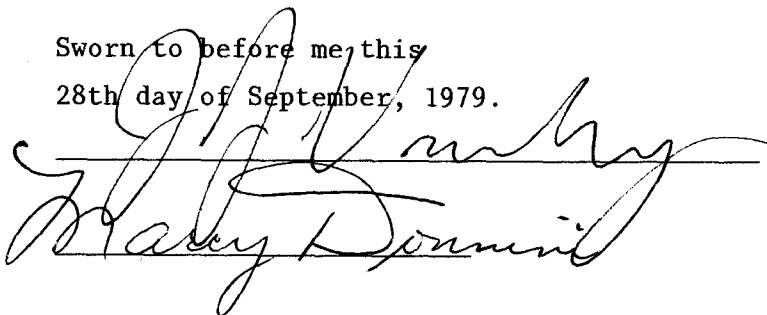
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Karl F. & Ruth Frank, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Karl F. & Ruth Frank
1218 Casedale St.
Lehigh Acres, FL 33939

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
28th day of September, 1979.



Mary J. Donnell

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Karl F. & Ruth Frank :

AFFIDAVIT OF MAILING

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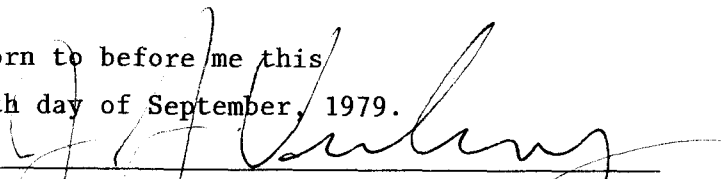
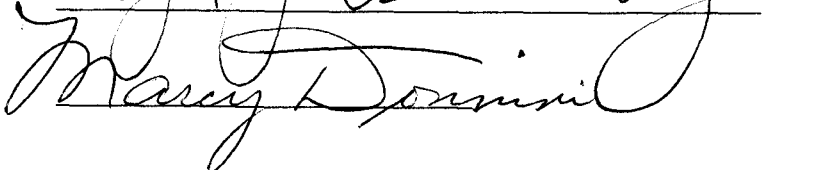
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by mail upon Robert S. McLellan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert S. McLellan
115 West Sunrise Hgy.
Freeport, NY 11520

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
28th day of September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Karl F. & Ruth Frank
1218 Casedale St.
Lehigh Acres, FL 33939

Dear Mr. & Mrs. Frank:

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,



cc: Petitioner's Representative
Robert S. McLellan
115 West Sunrise Hgy.
Freeport, NY 11520
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
KARL F. FRANK and RUTH FRANK : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for the :
Year 1971. :

Petitioners, Karl F. and Ruth Frank, 1218 Casedale Street, Lehigh Acres, Florida 33936, 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 1971 (File No. 10633).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1978 at 9:15 A.M. Petitioners appeared by Robert S. McLellan, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a lump-sum retirement benefit payment received by a nonresident constituted an annuity.

FINDINGS OF FACT

1. Petitioners, Karl F. and Ruth Frank, timely filed a New York State income tax nonresident return for 1971, on which petitioner Karl F. Frank did not include as New York source income, a lump-sum retirement benefit payment which he received from a retirement annuity fund set up by his New York State employer.

2. On February 6, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1971, on which it contended that the lump-sum payment did not constitute an annuity, but was compensation for past personal services which were rendered in New York State. The Income Tax Bureau accordingly issued a Notice of Deficiency on July 29, 1974 for \$2,691.93 in personal income tax, plus \$369.60 in interest, for a total of \$3,061.53.

3. Upon retirement, petitioner Karl F. Frank had the option of receiving a fixed, monthly retirement pension payment for life, or of taking the entire cash value of the retirement fund annuity in a lump-sum amount, which he elected to do.

4. Petitioner contended that the fund which his employer set up was an annuity fund as defined under Federal law and that all distributions from said fund constituted annuity payments, regardless of whether or not they were payable at regular intervals.

CONCLUSIONS OF LAW

A. That the lump-sum retirement benefit payment received by petitioner Karl F. Frank during 1971 was taxable compensation for past personal services which he performed in New York State, within the meaning and intent of section 632(b)(1)(B) of the Tax Law. The retirement benefit was not paid at regular intervals; therefore, it did not meet requirement (B) of 20 NYCRR 131.4(d)(2) and, thus, did not constitute an annuity for New York State income tax purposes.

B. That the petition of Karl F. and Ruth Frank is denied and the Notice of Deficiency issued on July 29, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER