

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph & Helene Relkin :

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 Year 1971. :

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 Joseph & Helene Relkin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Helene Relkin

1155 103rd St.

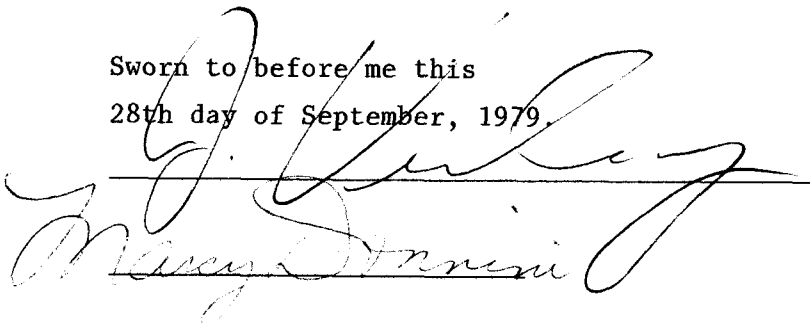
Bay Harbor Is., FL 33154

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 Stanini

STATE OF NEW YORK  
STATE TAX COMMISSION

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Joseph & Helene Relkin :

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Personal Income Tax :

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State of New York

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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 certified mail upon Marvin W. Weinstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

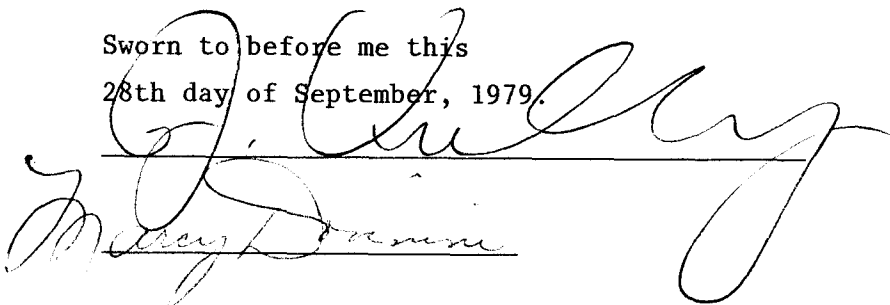
Mr. Marvin W. Weinstein  
41 E. 42nd St., Suite 1118  
New York, NY 10017

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.



Handwritten signature of Jay Vredenburg, appearing as 'Jay Vredenburg' in cursive script, written over a horizontal line.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Joseph & Helene Relkin  
1155 103rd St.  
Bay Harbor Is., FL 33154

Dear Mr. & Mrs. Relkin:

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  
Marvin W. Weinstein  
41 E. 42nd St., Suite 1118  
New York, NY 10017  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 22, 1978 at 1:15 P.M. Petitioners appeared by Marvin W. Weinstein, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (A. Schwartz, Esq., of counsel).

# ISSUE

Whether compensation received by petitioner Joseph Relkin constituted an annuity pursuant to 20 NYCRR 131.4(d) and, as such, is not subject to New York personal income tax.

FINDINGS OF FACT

1. Petitioners, Joseph and Helene Relkin, filed a joint New York State Income Tax Nonresident Return for 1971, on which petitioners reported deferred compensation of \$8,907.00 in their Federal adjusted gross income, but not in their New York adjusted gross income.

2. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency with an explanatory Statement of Audit Changes to petitioners, which indicated the following:

(a) Petitioners were found to be domiciled in New York State until April 19, 1971 and their tax liability was recomputed in accordance with section 654 of the Tax Law. This finding was conceded by them and is not at issue.

(b) The reported deferred compensation of \$8,907.00 was itemized as follows:

Relkin Textile Co. (Resident Period)	\$1,469.00
Relkin Textile Co. (Nonresident Period)	2,938.00
Relkin Industries Corp.	<u>4,500.00</u>
Total	<u>\$8,907.00</u>

The Income Tax Bureau held that all items of deferred compensation were taxable in the applicable resident and nonresident period. The only item at issue is the \$2,938.00 received from the Relkin Textile Company during the nonresident period.

3. Petitioner Joseph Relkin was employed by the Relkin Export Corp. under a contract embodying a pension plan. In order to comply with the contract, Relkin Export Corp. purchased an annuity policy from the Equitable Life Assurance Society of the United States.

4. In May of 1947, petitioner Joseph Relkin became president and general manager of Relkin Textile Co., Inc., which corporation continued petitioner's pension plan by purchasing the annuity policy from the Relkin Export Corp.

5. The annuity policy issued by the Equitable Life Assurance Society of the United States was a "ten years certain" life annuity plan requiring the payment of a fixed monthly amount for the life of petitioner, upon his retirement.

6. Petitioner Joseph Relkin's right to receive the pension was evidenced by a written instrument executed by his employer.

7. On November 25, 1963, the monthly income required under the annuity policy became effective in accordance with elections exercised by petitioner Joseph Relkin.

#### CONCLUSIONS OF LAW

A. That the deferred compensation of \$2,938.00 received by petitioners during the nonresident period constituted an annuity as defined in 20 NYCRR 131.4 (d); accordingly, it is not included in New York adjusted gross income under section 632 of the Tax Law.

B. That the petition of Joseph and Helene Relkin is granted to the extent that the \$2,938.00 received as an annuity is

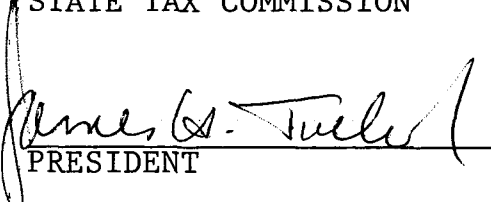
excluded from petitioner's New York adjusted gross income which was derived during the nonresident period.

C. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued January 27, 1975 but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER