

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John Frankel Trust :

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 Years f/y/e 5/31/63-5/31/71. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon John Frankel Trust, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

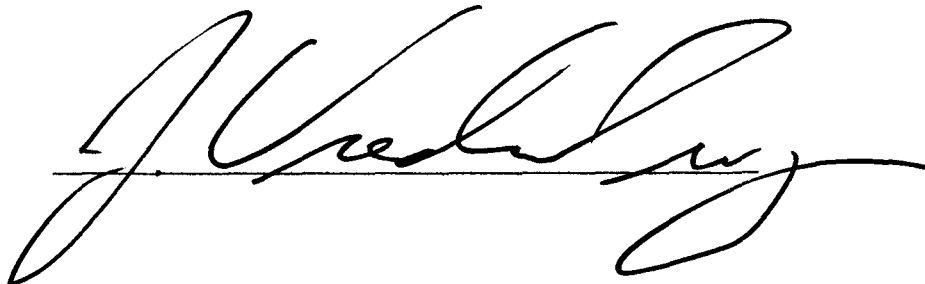
John Frankel Trust
c/o M. Cole, C. Hecht, State Bank of Conn.
One Atlantic St.
Stamford, CT 16901

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
5th day of September, 1980.

Debbie Bank



STATE OF NEW YORK
STATE TAX COMMISSION

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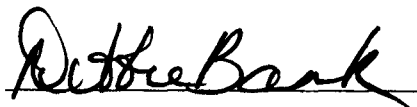
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of September, 1980, he served the within notice of Decision by certified mail upon Michael I. Frankel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

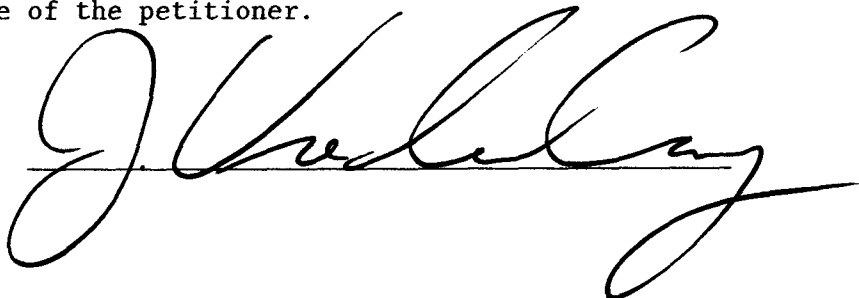
Mr. Michael I. Frankel
Cleary, Gottlieb, Steen & Hamilton
One State St. Plaza
New York, NY 10004

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
5th day of September, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 5, 1980

John Frankel Trust
c/o M. Cole, C. Hecht, State Bank of Conn.
One Atlantic St.
Stamford, CT 16901

Gentlemen:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael I. Frankel
Cleary, Gottlieb, Steen & Hamilton
One State St. Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN FRANKEL TRUST	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for fiscal years ending May 31,	:	
1963 through May 31, 1971.	:	

Petitioner, John Frankel Trust, c/o Malcolm Cole, Charles M. Hecht, State Bank of Connecticut, One Atlantic Street, Stamford, Connecticut 16901, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for fiscal years ending May 31, 1963 through May 31, 1971 (File No. 14213).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1977 at 1:15 P.M. Petitioner appeared by Cleary, Gottlieb, Steen & Hamilton (Michael Frankel, Esq.) The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether the notice requirement of section 681 of the Tax Law is satisfied by timely and actual notice by uncertified or unregistered mail to the petitioner of deficiencies in personal income taxes for fiscal years ending May 31, 1963 through May 31, 1971.

II. Whether a trust executed in the State of Connecticut by a domiciliary of New York State, which by its terms is to be administered under Connecticut law, may properly be taxed by the State of New York as a resident trust, because a substantial portion of the trust property is located in New York State and a majority of the trustees reside within New York State.

FINDINGS OF FACT

1. The trustees for the subject fiscal years timely filed New York State income tax fiduciary returns on behalf of the John Frankel Trust. The trustees reported only the income derived from a New York partnership. Appropriate consents fixing the period of limitation upon assessment of personal income were executed by the trustees.

2. On June 25, 1973, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency to petitioner for fiscal years ending May 31, 1963 through May 31, 1971 in the amount of \$12,396.22 in income tax, plus \$3,837.98 in interest, for a total of \$16,234.20.

3. John Frankel, a resident of New York State, was the beneficiary of an irrevocable inter vivos trust established on June 27, 1956 by Ferdinand Frankel, his father. Ferdinand Frankel died on May 4, 1963, while a domiciliary of the State of New York.

4. The trust was executed in the State of Connecticut and provides that it shall be construed and regulated by the laws of the State of Connecticut.

5. The trust instrument provides for administration by three trustees, only one of whom must be a resident of the State of Connecticut. Two of the three trustees were residents of New York State during the period herein involved.

6. The trust instrument provides that trust property be held and administered in the State of Connecticut.

7. During the period herein involved, a substantial portion of the property in the trust consisted of property located within New York State. This property was in the form of an interest in a New York partnership. The balance (not located in New York) consisted of intangible personal property in the form of securities.

CONCLUSIONS OF LAW

A. That the presumption of delivery does not arise until adequate proof of mailing has been adduced. (Caprino v. Nationwide Mutual Insurance Company, 34 A.D.2d 522). Adequate proof of mailing of the Notice of Deficiency in this case was shown by the fact that petitioner received actual notice of deficiency sufficient for the filing of a timely petition for redetermination and in fact filed the petition. Accordingly, petitioner received satisfactory notice of the deficiency under section 681 of the Tax Law.

B. That section 350.7 of the Tax Law (applicable to taxable years ending before December 31, 1960) defined a resident trust as a trust created by or consisting of property of a person domiciled within the state.

C. That section 605(c)(3) of the Tax Law (applicable to taxable years ending on or after December 31, 1960) defines a resident trust as a trust consisting of property of a person domiciled in New York at the time the property was transferred to the trust which simultaneously or subsequently becomes irrevocable.

D. That the settlor of the John Frankel Trust was a domiciliary of New York at the time the trust became irrevocable. Thus the John Frankel Trust is a resident trust within the meaning of section 605(c)(3) of the Tax Law.

E. That section 618 of the Tax Law states in part that the New York taxable income of resident trust means its federal taxable income as defined in the laws of the United States for the taxable year. Thus the trustees were required to report all the trust income to New York in accordance with section 618 of the Tax Law.

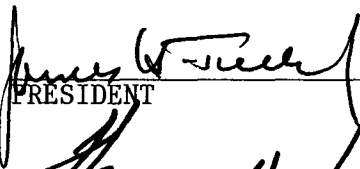
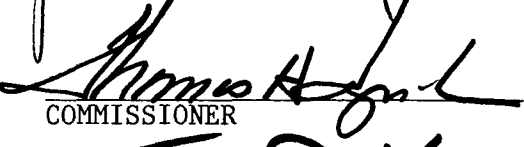
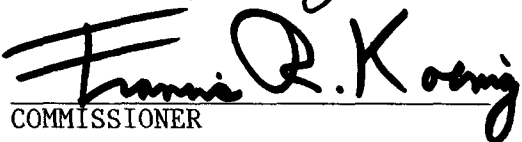
F. That taxation is permissible where a sufficient nexus can be shown. National Geographic Society v. The California Board of Equalization, 430 U.S. 551. The location of a substantial portion of trust property within New York State, together with residence within the State of a majority of the trustees of a trust established by a New York domiciliary, constitutes a sufficient nexus for taxation of such trust by the State of New York as a resident trust. Therefore, petitioner is liable for personal income tax for fiscal years ending May 31, 1963 through May 31, 1971 under Article 22 of the Tax Law.

G. That the petition of the John Frankel Trust is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER