

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Julien & Graciela Mendlewicz :
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 1973. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Julien & Graciela Mendlewicz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

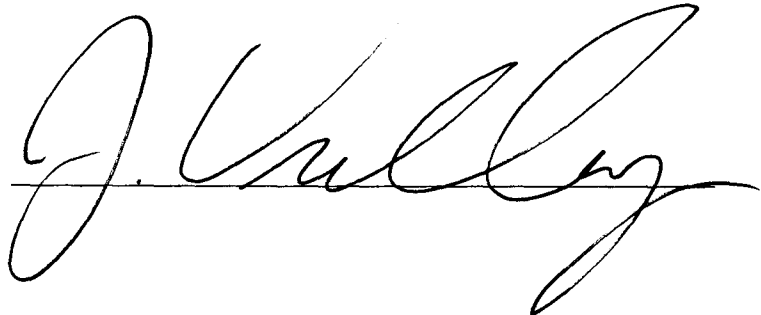
Julien & Graciela Mendlewicz
c/o Anthony B. Cataldo
53 Park Pl.
New York, NY 10007

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
18th day of July, 1980.

Isroah A. Bent



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Julien & Graciela Mendlewicz :
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 1973. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Anthony B. Cataldo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

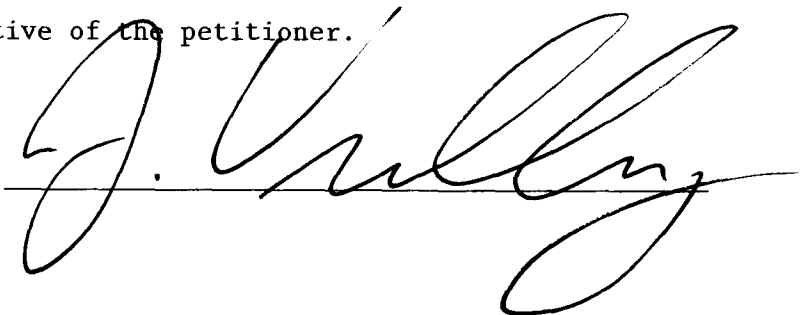
Mr. Anthony B. Cataldo
53 Park Pl.
New York, NY 10007

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
18th day of July, 1980.

Leticia A. Bank



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

July 18, 1980

Julien & Graciela Mendlewicz
c/o Anthony B. Cataldo
53 Park Pl.
New York, NY 10007

Dear Mr. & Mrs. Mendlewicz:

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
Anthony B. Cataldo
53 Park Pl.
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JULIEN MENDLEWICZ AND GRACIELA MENDLEWICZ : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1973. :

Petitioners, Julien Mendlewicz and Graciela Mendlewicz, c/o Anthony B. Cataldo, 53 Park Place, New York, New York 10007 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 1973 (File No. 18919).

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 15, 1979 at 1:15 P.M. Petitioners appeared by Anthony B. Cataldo, Esq. The Audit Division appeared by Peter Crotty, Esq. (A. Schwadron, Esq., of counsel).

ISSUE

Whether a change in the source of income disqualified petitioners' tax exempt status granted under an Income Tax Treaty between the United States of America and Belgium.

FINDINGS OF FACT

1. Petitioners, Julien Mendlewicz and Graciela Mendlewicz, timely filed a separate but combined New York State resident income tax return for the year 1973.

2. On May 2, 1975, the Income Tax Bureau received a claim for refund asserting an overpayment of \$2,739.23 in personal income tax for the year

1973. The refund claim was based on the contention that \$29,072.03 in income received by petitioner Julien Mendlewicz was exempt from taxation under an Income Tax Treaty between Belgium and the United States. In addition, the refund claim was computed as if both petitioners had filed a joint New York State return.

3. On March 11, 1976, the Audit Division issued a letter notifying petitioners, Julien Mendlewicz and Graciela Mendlewicz, that their refund claim of \$2,739.23 was reduced to \$974.34, and the balance of \$1,764.89 was disallowed. Attached thereto was a Voucher for Income Tax Refund, which explained the reduced refund as follows:

"The correct total New York State tax withheld as substantiated by the withholding statements submitted with the original return totals \$2,772.80 and not \$3,272.80, as indicated on the claim."

"Based on a review of the Income Tax Treaty with Belgium, Article 21 of the Treaty, exempts from tax income received as a grant or allowance and \$2,000.00 of income from personal services."

"Therefore, the income received from Research Foundation for Mental Hygiene Inc. in the amount of \$5,729.87 is being excluded as well as \$2,000.00 of the income received from the State of New York, resulting in a total exclusion of \$7,729.87."

The voucher revealed that the reduced refund of \$974.34 was computed based on a separate (but combined) tax return.

4. Petitioner Julien Mendlewicz was a medical doctor in Belgium when he entered the United States, at the invitation of the Belgian American Education Foundation, Inc., for the purpose of engaging in research as a holder of a graduate fellowship. Subsequently, he was awarded a federal grant payable through the Research Foundation for Mental Hygiene, Inc., a unit of the Psychiatric Institute of the State of New York ("the Institute") to engage in research on human genetics of affective disorders; and to participate in a Ph.D. program at the College of Physicians and Surgeons at Columbia University.

5. In September, 1971, petitioner started his activities as a researcher and student. However, on March 1, 1973, funds for the grant were exhausted. In order to allow petitioner to complete his research and to continue his studies, the Institute appointed petitioner to the permanent position of "Psychiatrist II --Research", a New York State civil service position. Although petitioner was technically an "employee", he was not assigned the normal duties of that position, but was totally confined to the research started in 1971. In addition, petitioner continued his studies at the College of Physicians and Surgeons until December, 1973, when he was awarded a Ph.D. degree.

6. Petitioner Julien Mendlewicz received during 1973, \$5,729.87 from the Research Foundation for Mental Hygiene, Inc. and \$25,778.47 from the Psychiatric Institute of the State of New York.

7. Sometime during the year 1974, petitioner Julien Mendlewicz completed his research project and returned to his home in Belgium.

CONCLUSIONS OF LAW

A. That the primary intent of Article 21 of the Income Tax Treaty between the United States and Belgium was to provide a temporary exemption from host state taxes, "In order to encourage cultural exchanges of students, trainees, and teachers...", (statement on proposed Income Tax Treaty with Belgium by Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy, before the Senate Committee on Foreign Relations, October 6, 1970).

B. That the income exemption provided by Article 21 of the Income Tax Treaty between the United States and Belgium shall continue for such period of time as may be reasonably or customarily required to effectuate the purpose of his visit, but limited to a total of five taxable years (Treasury Department's technical explanation of proposed U.S. - Belgium Income Tax Treaty signed July 9, 1970).

C. That the wages paid to petitioner Julien Mendlewicz by the Psychiatric Institute of the State of New York after March 1, 1973 was an "allowance" paid in the form of a salary, for the sole and exclusive purpose of permitting petitioner to complete his research and studies and, as such, the income is exempt from taxation within the meaning and intent of Article 21 of the Income Tax Treaty between the United States and Belgium (as applicable during the year 1973) and Article 22 of the Tax Law.

D. That the New York State personal income tax liability for the year 1973 is recomputed, as follows:

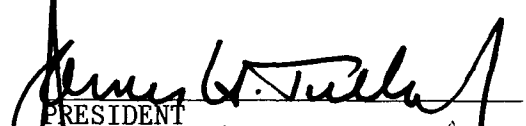
Filing Status: Married - filing joint return		
Joint Gross Income		\$39,978.40
Less: Tax Treaty Exclusion	\$31,508.34	
N.Y.S. Itemized Deductions	2,637.06	
N.Y.S. Exemptions	<u>1,950.00</u>	\$36,095.40
N.Y.S. Taxable Income		<u>3,883.00</u>
Corrected Personal Income Tax		115.32
Tax Previously Paid		<u>1,391.12</u>
Amount of Overpayment		<u>\$ 1,275.80</u>

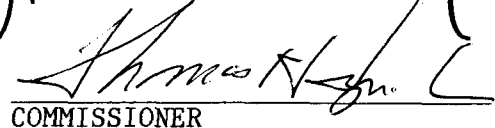
E. That the petition and claim for refund of Julien Mendlewicz and Graciela Mendlewicz are granted to the extent indicated in Conclusions of Law "C" and "D", above; that the Audit Division is hereby directed to authorize a refund of \$1,275.80 together with such interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.

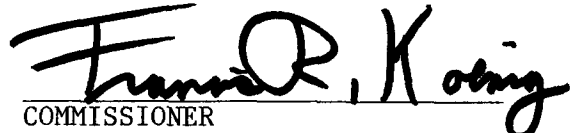
DATED: Albany, New York

JUL 1 8 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER