

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Julien Mendlewicz	:	
and Graciela Mendlewicz	:	
	:	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	:	
1974, 1975 and 1976.	:	

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Julien Mendlewicz and Graciela Mendlewicz the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

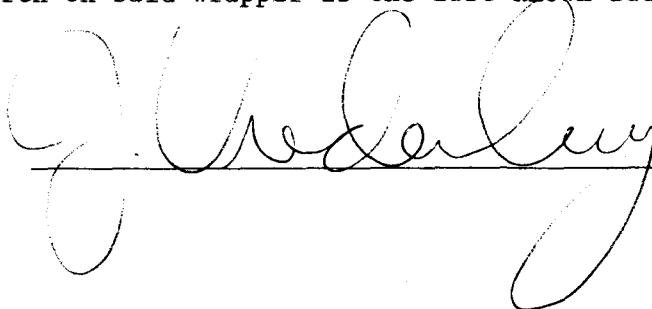
Julien Mendlewicz
and Graciela Mendlewicz
c/o Anthony B. Cataldo
53 Park Place
New York, NY 10007

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
27th day of November, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Julien Mendlewicz :
and Graciela Mendlewicz :
: 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 :
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State of New York
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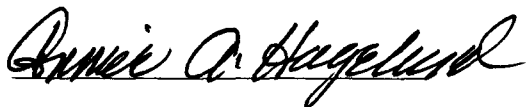
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of November, 1981, he served the within notice of Decision by certified mail upon Anthony B. Cataldo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

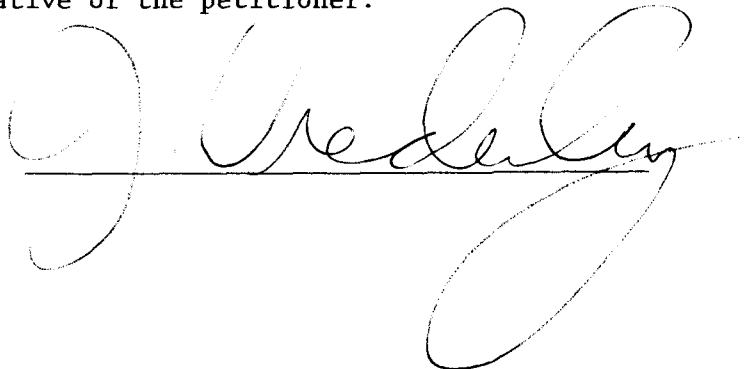
Anthony B. Cataldo
53 Park Pl.
New York, NY 10007

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
27th day of November, 1981.


James A. Hegeland


Jay Vredenburg

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

November 27, 1981

Julien Mendlewicz
and Graciela Mendlewicz
c/o Anthony B. Cataldo
53 Park Place
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 Years 1974, 1975 and	:	
1976.	:	

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 years 1974, 1975 and 1976 (File No. 23160).

On November 7, 1980, petitioner informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

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 joint New York State Income Tax Resident Return for the year 1974, on which all income was reported as being exempt from taxation pursuant to an Income Tax Treaty between the United States and Belgium.

2. On April 4, 1978, the Audit Division issued a Notice of Deficiency for \$9,307.67, plus interest of \$1,548.54, for the years 1974, 1975 and 1976, on which all income was held taxable. Subsequently, the Audit Division conceded the tax years 1975 and 1976, since petitioners were nonresident individuals who rendered all services without New York State during these years. Accordingly, the sole tax year at issue is 1974 with a remaining deficiency of \$2,913.49, plus interest.

3. 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.

4. 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, at which time he was awarded a Ph.D. degree.

5. Petitioner's research continued during 1974, the results of which were disseminated through research papers and lectures at various medical and

scientific organizations. Petitioner was invited to lecture on his findings in Brussels (April 20, 1974), Paris (July 8, 1974), Jerusalem (August 2, 1974) and Argentina (September 20, 1974).

6. Petitioner Julien Mendlewicz received during 1974, \$33,339.95 from the Psychiatric Institute of the State of New York. On November 14, 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, and during 1974 was an "allowance" paid in the form of a salary, for the sole and exclusive purpose of permitting petitioner to complete his research and, as such, the income is exempt from taxation within the meaning and intent of Article 21 of the Income

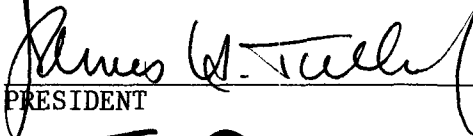
Tax Treaty between the United States and Belgium (as applicable during the year 1974) and Article 22 of the Tax Law.


D. That the petition of Julien Mendlewicz and Graciela Mendlewicz is granted and the Notice of Deficiency issued April 4, 1978, is cancelled.


DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER