

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL and ROBERTA MENDLOVITZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(6)~~ 22 of the :
Tax Law for the Year ~~(1970)~~ 1970. :

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Saul & Roberta Mendlovitz ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Saul Mendlovitz
381 Broad Street
Newark, New Jersey 07104

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)~~ ~~(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

24th day of August, 1977.

Marsina Donnini

Saul Mendlovitz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL and ROBERTA MENDLOVITZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (~~1970~~) 1970.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Walter Leipzig (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Walter Leipzig, CPA
Leipzig & Starr
516 Fifth Avenue
New York, New York 10036
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

24th day of August, 1977.

Marsina Donnini

Janet Mac



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

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

August 24, 1977

Mr. & Mrs. Saul Mendlovitz
381 Broad Street
Newark, New Jersey 07104

Dear Mr. & Mrs. Mendlovitz:

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 **(a) 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,

Joseph Chyrywat
Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAUL and ROBERTA MENDLOVITZ :
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1970. :

Petitioners, Saul and Roberta Mendlovitz, residing at 381 Broad Street, Newark, New Jersey 07104, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 13312).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 21, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Walter Leipzig, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

Whether days on which petitioner worked at an office in his home in Massachusetts and at an office at Rutgers Law School in New Jersey during the year 1970 constituted days worked outside New York State for New York State personal income tax allocation purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners, Saul and Roberta Mendlovitz, timely filed a New York State nonresident return for the year 1970. They allocated the income received by petitioner, Saul Mendlovitz, from the Institute For World Order, based on days worked within and without New York State.

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioners, Saul and Roberta Mendlovitz, imposing additional personal income tax on the grounds that the sixty-five days spent at Rutgers Law School and at Cohasset, Massachusetts, in preparing a book were being disallowed as out-of-state working days since these days could have been spent in New York State were it not for his personal preference and convenience. It also eliminated from nonworking days twenty-three Saturdays and Sundays, since these days were included in the petitioner's schedule as working days. Based on the schedule submitted by the petitioners, the Bureau allowed eighty-three days as days worked outside New York State.

3. Petitioners, Saul and Roberta Mendlovitz, were residents of the State of New Jersey during the year 1970.

4. During the year 1970, petitioner, Saul Mendlovitz, was employed by Rutgers Law School as a professor of law. He was also employed by the Institute For World Order, as a director of a

research project known as the World Order Models Project. The income received by the petitioner from Rutgers Law School, located in New Jersey, is not subject to New York State tax, therefore is not at issue. The income received by the petitioner from the Institute For World Order, located in New York State, in the sum of \$38,500.00 was allocated by the petitioner based on days he worked within and without New York State. The petitioner submitted a schedule of days worked outside New York State.

5. Petitioner, Saul Mendlovitz, in addition to being a director of the aforesaid project for the Institute For World Order, was a consultant to its university and high school program; he, also, was engaged in the preparing of text books for universities, both in the United States and throughout the world.

6. Petitioner, Saul Mendlovitz, performed his administrative duties for the Institute For World Order at their offices located in New York State. However, the petitioner also had a responsibility for research and writing and it was understood by both he and the Institute that this work would necessarily have to be carried on out of the office of the Institute, because he needed a library and an office which was conducive to writing.

7. Petitioner, Saul Mendlovitz, maintained that an office and research facilities were set up for him at Rutgers Law School as a professor of law, and his selection of Rutgers Law School

as a base for doing his research and writing tasks for the Institute was not a matter of personal convenience, but a matter of necessity, since he would not have been able to establish that kind of research environment at either a public library or university in the New York City area.

8. Petitioner, Saul Mendlovitz, further maintained that his office located at his Cohasset, Massachusetts home, was set up to meet his research and writing tasks, and he would not have been able to find an office in the New York City area without a great deal of additional costs.

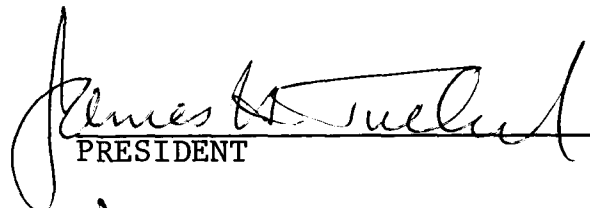
9. That the sixty-five days on which he worked at the offices located at Rutgers Law School in New Jersey and at his home office located at Cohasset, Massachusetts, during the year 1970 constituted days worked at these locations by reason of his convenience and not for the necessity of his employer and therefore said days cannot be considered to be days worked outside of New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

10. That petitioner, Saul Mendlovitz, worked a total of 259 days for the Institute For World Order during 1970, of which 176 days were worked within New York State and 83 days were worked outside New York State within the meaning and intent of 20 NYCRR 131.16 and therefore the Notice of Deficiency dated April 11, 1975 properly reflected petitioners' income allocable to New York State for the year 1970.

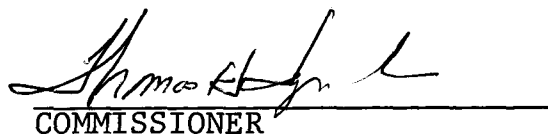
11. That the petition of Saul and Roberta Mendlovitz is denied and the Notice of Deficiency issued on April 11, 1975 in the sum of \$736.30 is sustained.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER