

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Raymond M. & Janet V. Miles :

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 1970. :

State of New York

County of Albany

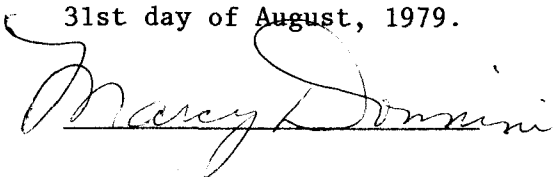
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Raymond M. & Janet V. Miles, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

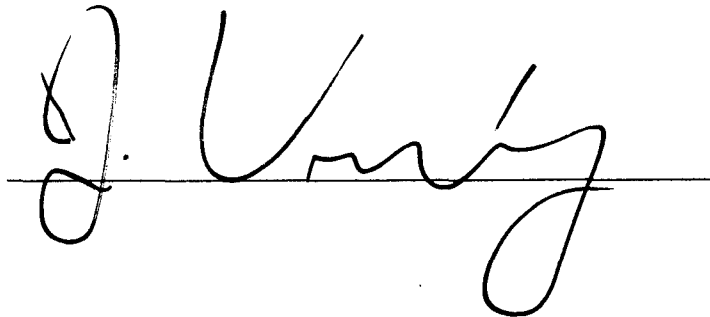
Raymond M. & Janet V. Miles
5 Putnam Hill, Apt. 2-D
Greenwich, CT 06830

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
31st day of August, 1979.


Nancy L. Dominini





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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Raymond M. & Janet V. Miles
5 Putnam Hill, Apt. 2-D
Greenwich, CT 06830

Dear Mr. & Mrs. Miles:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1978 at 10:45 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the pension payments received by petitioner Raymond M. Miles constituted an annuity, or whether said payments were received in consideration for past services performed in New York State.

FINDINGS OF FACT

1. Petitioners, Raymond M. Miles and Janet V. Miles, timely filed a joint New York State income tax resident return for 1970, on which

they allocated two-thirds of their taxable income as being subject to New York State income tax.

2. On February 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners, asserting personal income tax of \$155.91, plus interest of \$17.43, for a total of \$173.34. The Notice was issued on the grounds that the income reported for the resident period was computed incorrectly, and that the payments received by petitioner Raymond M. Miles (as a nonresident) from Universal City Studios were taxable to him as compensation for past services rendered.

3. Petitioners became residents of the State of Connecticut on August 27, 1970. They agreed that the New York taxable income for the resident period (as shown on the Notice of Deficiency) was properly determined, and that the pension received from Universal City Studios met the requirements of an annuity as set forth in 20 NYCRR 131.4(d)(2)(A), (B), and (C), but not the requirement set forth in 20 NYCRR 131.4(d)(2)(D).

4. Petitioner Raymond M. Miles retired on January 1, 1969 from Universal Pictures, a division of Universal City Studios, Inc., a subsidiary of MCA, Inc. Although he did not belong to a union pension plan, he was granted a pension of \$200 a week for the rest of his life by his employer.

5. The annual report to stockholders of MCA, Inc. for 1971 stated as follows:

Most of the company's domestic employees are covered under union pension plans and the company's profit sharing plan. Contributions to all such plans, which are currently funded, amounted to \$3,986,000 and \$3,697,000 for 1971 and 1970. There is no past service liability.

As a result, petitioner Raymond M. Miles argued that the income received by him was a pension, and that it was not for past services rendered.

6. Petitioner received periodic cost of living increases in his retirement payments.

7. There was no written instrument under which the pension payments were made other than an oral understanding and a letter received by petitioner subsequent to his retirement, which reaffirmed said agreement.

8. Petitioner contended that for many years, it was company policy to retire and give pensions to some employees of long standing at its own discretion, without regard to their position within the company.

CONCLUSIONS OF LAW

A. That petitioner Raymond M. Miles' right (if any) to receive the retirement benefit was not evidenced by a written instrument executed by his employer, nor by a plan established and maintained by his employer in the form of a definite written program communicated to its employees as required by 20 NYCRR 131.4(d)(2)(D). Accordingly, the retirement benefits received by petitioner Raymond M. Miles did not constitute an annuity and therefore, they are taxable to the extent that said petitioner's services were performed in New York State (20 NYCRR 131.4(d)).

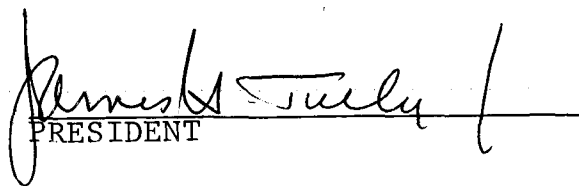
B. That the Income Tax Bureau properly allocated all of petitioner Raymond M. Miles' retirement benefits to New York State under 20 NYCRR 131.18.

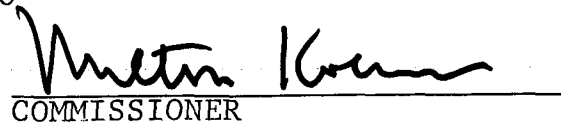
C. That the petition of Raymond M. Miles and Janet V. Miles is denied and the Notice of Deficiency issued February 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

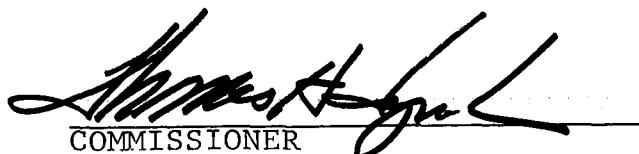
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1979


PRESIDENT


COMMISSIONER


COMMISSIONER