

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL NEWSOM and LOIS NEWSOM and
THE ESTATE OF EARL NEWSOM

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article ~~20~~ 22 of the
Tax Law for the Year(s) 1967, 1968 &
1970.

State of New York
County of Albany

MARY GROFF, 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 27th day of August, 1975, she served the within Notice of Decision (~~on Redetermination~~) by (certified) mail upon EARL NEWSOM and LOIS NEWSOM and THE ESTATE OF EARL NEWSOM ~~& THE ESTATE OF EARL NEWSOM~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Lois Newsom & The Estate of Earl Newsom Salisbury, Connecticut 06068

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 Post Office Department 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 August, 1975

Janet Mach

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL NEWSOM and LOIS NEWSOM and
THE ESTATE OF EARL NEWSOM

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1967, 1968 &
1970.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

MARY GROFF, 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 27th day of August, 1975, she served the within
Notice of Decision ~~(on Determination)~~ by (certified) mail upon JAMES F. RITTINGER, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James F. Rittinger, Esq.
Satterlee & Stephens
277 Park Avenue
New York, New York 10017

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 August, 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
~~James H. Tully, Jr.~~
PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
August 27, 1975

**Mrs. Lois Newson
& The Estate of Earl Newson
Salisbury, Connecticut 06068**

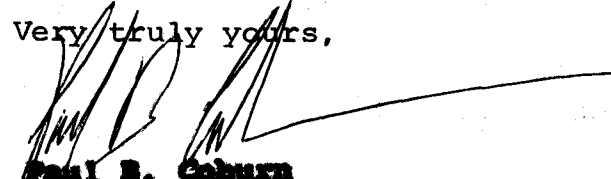
Dear Mrs. Newson:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (a) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
EARL NEWSOM and LOIS NEWSOM :
AND : DECISION
THE ESTATE OF EARL NEWSOM :
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1967, 1968 and 1970. :
:

Petitioners, Earl Newsom and Lois R. Newsom and the Estate of Earl Newsom, residing at Salisbury, Connecticut 06068, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968 and 1970. (File Nos. 9-49865017 and 0-69181191). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1974, at 9:15 A.M. Petitioners appeared by Satterlee & Stephens, Esqs. (James F. Rittinger, Esq. of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUES

I. Did petitioner, Earl Newsom's activities as an independent consultant for Earl Newsom & Company, Inc. during the years 1967, 1968 and 1970, constitute the carrying on of an unincorporated business?

II. If petitioner, Earl Newsom, was carrying on an unincorporated business during said year, what portion of the income derived therefrom should be allocated to New York State for the purposes of ascertaining personal income and unincorporated business tax liabilities for the years 1967, 1968 and 1970?

III. Did petitioners, Earl Newsom and Lois R. Newsom, have reasonable cause for failing to file a New York State income tax return for the year 1968?

FINDINGS OF FACT

1. On April 3, 1968, petitioner, Earl Newsom, filed a New York State income tax nonresident return for the year 1967. He reported total income of \$75,682.74 for Federal income tax purposes and no income for New York State income purposes.

2. On February 10, 1970, petitioners, Earl Newsom and Lois R. Newsom, filed an amended New York State income tax nonresident return for the year 1967. They reported total income of \$75,682.74 for Federal income tax purposes and \$16,607.15 for New York State income

tax purposes. On the same date they filed a New York State income tax nonresident return for the year 1968. They reported total income of \$73,750.17 for Federal income tax purposes and \$13,796.19 for New York State income tax purposes.

3. On October 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Earl Newsom and Lois R. Newsom, imposing additional personal income tax for the year 1967 in the sum of \$2,888.44 and for the year 1968 in the sum of \$3,874.75 upon the grounds that the consultant fees received by petitioner, Earl Newsom, from Earl Newsom & Company, Inc. constituted a wage continuation plan subject to New York personal income tax and that days worked at home in Connecticut were not a proper basis for allocation. It further imposed a penalty for the year 1968 in the sum of \$1,075.49 pursuant to section 685(a) of the Tax Law for failure to timely file a New York State income tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$9,038.64. ✓

4. On April 13, 1971, petitioners, Earl Newsom and Lois R. Newsom, filed a New York State income tax nonresident return for the year 1970. They reported total income of \$69,754.50 for Federal income tax purposes and no income for New York State income tax purposes. They claimed a refund of \$600.00 previously paid as estimated tax.

5. Petitioner, Earl Newsom, died on April 11, 1973.

6. On February 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Estate of Earl Newsom and Lois R. Newsom, imposing additional personal income tax for the year 1970 in the sum of \$3,947.72 upon the grounds that alleged consultant fees in the sum of \$50,000.00 paid under a wage continuation plan by Earl Newsom & Company, Inc. to petitioner, Earl Newsom, were subject to New York State personal income tax. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,625.31.

7. Earl Newsom & Company, Inc. was a public relations counselling firm during the years 1967, 1968 and 1970, serving basically industrial clients. The company was founded by petitioner, Earl Newsom, in 1935 as Earl Newsom & Company. It was incorporated in 1965. In 1966, he was approximately 67 years of age. He had been sick for a long period of time and had become less active in the affairs of the company.

8. On January 1, 1966, Earl Newsom & Company, Inc. entered into a written contract with petitioner, Earl Newsom, wherein he was retained by the corporation as an independent consultant commencing January 1, 1967 and continuing until his death at a retainer of \$50,000.00 a year payable monthly. During this period he was to "hold himself available for consultation and advice with the officers, directors and other

representatives of the company to the extent reasonably requested and to the extent that his physical condition will permit." The contract further provided that during the consulting period he would not compete with the company. It also provided that upon his death, the company would pay to his wife, petitioner, Lois R. Newsom, if she survived him, the sum of \$25,000.00 until her death. In addition, the contract provided that during the consulting period the company would reimburse him for traveling and other reasonable out-of-pocket expenses incurred by him in performing his consulting services. Pursuant to the terms of said agreement, he received \$50,000.00 a year during the years 1967 and 1970, and \$49,933.00 during the year 1968.

9. During the year 1967, petitioner, Earl Newsom, worked as a consultant for Earl Newsom & Company, Inc. for a total of 248 days of which 121.5 days were worked at his home in Connecticut, two days were worked in Michigan and 86.5 days were worked in New York State. During the year 1968, he worked a total of 186 days of which 127 days were worked at his home in Connecticut, two days were worked in Michigan and 57 days were worked in New York State. During the year 1970, he did not render any material services for the corporation.

10. During the years 1967, 1968 and 1970, petitioner, Earl Newsom, had an office available for his use at the New York City offices of Earl Newsom & Company, Inc. He also maintained an office in his home in Salisbury, Connecticut.

11. Petitioners, Earl Newsom and Lois R. Newsom, were residents of the State of Connecticut during the years 1967, 1968 and 1970.

12. Petitioners, Earl Newsom and Lois R. Newsom, were advised by their accountants that they were not required to file a New York State income tax return for the year 1968.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Earl Newsom, from Earl Newsom & Company, Inc. during the years 1967, 1968 and 1970 constituted income from a regular business as a business consultant for said corporation and not income as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Earl Newsom, during the years 1967, 1968 and 1970 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Earl Newsom, carried on his activities as a business consultant for Earl Newsom & Company, Inc. within and without New York State and since he maintained regular places of business within and without New York State during the years 1967, 1968 and 1970, therefore, a fair and equitable allocation of his unincorporated net business income must be made for purposes of determining his New York State personal income and unincorporated business taxes in accordance with the meaning and intent of sections 632(c) and 707(a) of the Tax Law.

D. That an allocation of 34.879% of petitioner, Earl Newsom's net unincorporated business income for the year 1967 to New York State; 30.645% of his net unincorporated business income for the year 1968 to New York State and 33.333% of his net unincorporated business income for the year 1970 to New York State constitutes a fair and equitable allocation of said income in accordance with the meaning and intent of section 707(d) of the Tax Law and 20 NYCRR 131.21. The allocation percentages for the years 1967 and 1968 are based upon the days worked by him within and without New York State. The allocation percentage for the year 1970 in which little or no services were rendered is based upon an approximation of the percentage of days worked in New York State during his active years as a consultant. The allocation formulas set forth in sections 707(b) and 707(c) of the

Tax Law and in 20 NYCRR 131.13 are not applicable since he did not submit books, records and other evidence that would permit the use of said formulas.

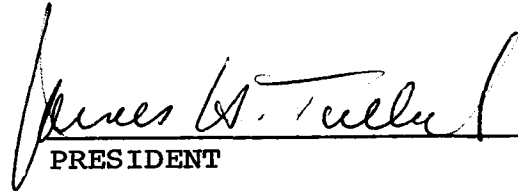
E. That petitioners, Earl Newsom and Lois R. Newsom, had reasonable cause for not filing a New York State income tax return for the year 1968, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

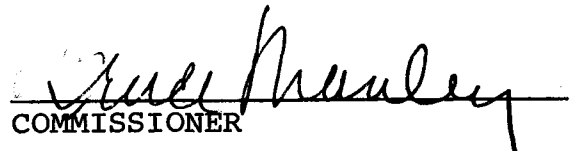
F. That the petitions of Earl Newsom and Lois R. Newsom and the Estate of Earl Newsom are granted to the extent of reducing additional New York State personal income tax due for the year 1967 from \$2,888.44 to a refund of \$4.84; for the year 1968 from \$3,874.75 to \$73.36 and for the year 1970 from \$3,947.72 to \$517.98 together with such interest as may be lawfully due and of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1968 in the sum of \$1,075.69; that except as so granted the petitions are in all other respects denied, and, that there is imposed against petitioner, Estate of Earl Newsom, New York State unincorporated business tax for the year 1967 in the sum of \$358.06,

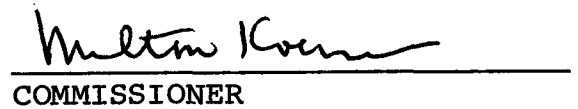
for the year 1968 in the sum of \$398.30 and for the year 1970 in the sum of \$458.33 together with such interest as may be lawfully due.

DATED: Albany, New York
August 27, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER