

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL D. SHAFER and ELINOR C. SHAFER

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(s) ~~or Period(s)~~ :
1969 and 1970.

State of New York
County of Albany

Bruce Batchelor, 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 14th day of April, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Paul D. Shafer and
Elinor C. Shafer, ~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Paul D. Shafer
High Fields, RD #1
Bloomsburg, New Jersey
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)~~
~~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

14th day of April, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969 and 1970.

State of New York
County of Albany

Bruce Batchelor , 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 14th day of April , 19 77, she served the within
Notice of Decision by (certified) mail upon Roy R. Bejsovec, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Roy R. Bejsovec, Esq.
Cullen and Dykman
177 Montague Street
Brooklyn, New York 11201
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

14th day of April , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 14, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Paul D. Shafer
High Fields, RD #1
Bloomsburg, New Jersey

Dear Mr. & Mrs. Shafer:

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

Please take further notice that pursuant to
Section(3) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
PAUL D. SHAFER and ELINOR C. SHAFER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, Paul D. Shafer and Elinor C. Shafer, residing at "High Fields", RD # 1, Bloomsburg, New Jersey, have filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 00656). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 18, 1976, at 10:30 A.M. Petitioner, Paul D. Shafer, appeared by Roy R. Bejsovec, Esq. The Income Tax Bureau appeared by Peter J. Crotty, Esq. Arthur R. Rosen, Esq., of counsel).

ISSUE

Whether compensation received by petitioner, Paul D. Shafer, from Packer Collegiate Institute after June 30, 1968 was for services rendered before petitioner's retirement as President of Packer Collegiate Institute, and if so, whether it constituted an annuity under 20 NYCRR 131.4(d).

FINDINGS OF FACT

1. Petitioners, Paul D. Shafer and Elinor C. Shafer, filed a New York State income tax nonresident return for the period from June 24, 1968 to December 31, 1968. They also filed New York State nonresident returns for the years 1969 and 1970. Petitioner Paul D. Shafer's compensation for the period June 24, 1968 to December 31, 1968 was \$11,679.97. His total compensation for the year 1969 was \$22,673.34. His total compensation for the year 1970 was \$11,336.52. All of this was earned by him as a consultant for Packer Collegiate Institute located in Brooklyn, New York. He did not report said payments as New York income. Federal and New York State income taxes and social security tax was withheld by Packer Collegiate Institute from said payments.

2. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul D. Shafer and Elinor C. Shafer, revising their allocation of income for the period June 24, 1968 to December 31, 1968 upon the grounds that all wages for said period were taxable to New York State. On March 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul D. Shafer and Elinor C. Shafer, revising their allocation of income for the years 1969 and 1970 upon the grounds that days worked at home were disallowed. In accordance with the aforesaid statements of audit changes, it issued notices of deficiency in the sums of \$1,171.81 and \$2,538.82, respectively.

3. Upon retiring as President of Packer Collegiate Institute, the petitioner, Paul D. Shafer, was retained by the Board of Trustees of Packer Collegiate Institute as a consultant concentrating on alumni fund raising. Petitioner's retirement as President was effective on June 30, 1968, and his engagement as Director of Development for the same employer was effective on the same date.

4. As a condition to his retention as Director of Development, the petitioner required that all of his work be performed at his home in New Jersey which was located 75 miles from New York City. He felt it would be inconvenient for him to do his work in New York. Furthermore, he and the Board of Trustees of Packer Collegiate Institute thought it would be detrimental to the orderly transition of duties and responsibilities of the Office of President, to have petitioner present at the Institute. No office space was provided for him in the New York office. It was left entirely in his discretion as to the amount of time and the manner in which he executed his duties.

5. Petitioner presented a list of alumni into evidence and ten pages of correspondence sent by petitioner to alumni of Packer Collegiate Institute. No approximation of the number of correspondences with alumni of petitioner's employer was offered. No phone bills, nor diary of running account, nor status report of calls and contacts made, were produced.

6. All services rendered by petitioner, Paul D. Shafer, for Packer Collegiate Institute, prior to June 24, 1968, were rendered in New York State. He did not render any services in New York State for Packer Collegiate Institute between June 24, 1968 and December 31, 1970.

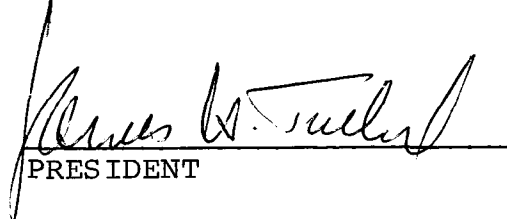
CONCLUSIONS OF LAW

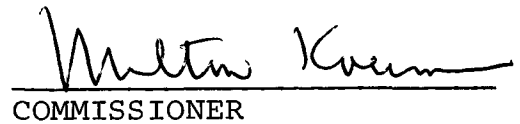
A. That the compensation received by petitioner, Paul D. Shafer, after June 30, 1968, to the end of 1968, plus the compensation for the entire years of 1969 and 1970 were received as a consultant for services rendered subsequent to June 30, 1968 outside of New York State and not for the services rendered by him prior to said date.

B. That the petitions of Paul D. Shafer and Elinor C. Shafer are granted, and the notices of deficiency issued March 20, 1972 and March 26, 1972, are cancelled.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER