

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Mundy I. & Betsey F. Peale :

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 1967 - 1969. :

AFFIDAVIT OF MAILING

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Mundy I. & Betsey F. Peale, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mundy I. & Betsey F. Peale
Box 654, Route 1
Laramie, Wyoming 82070

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
18th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Mundy I. & Betsey F. Peale :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
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for the Years 1967 - 1969. :

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Bruce J. Kniffen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Bruce J. Kniffen
Hardy, Peal, Rawlings & Werner
750 Third Ave.
New York, NY 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 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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Mundy I. & Betsey F. Peale
Box 654, Route 1
Laramie, Wyoming 82070

Dear Mr. & Mrs. Peale:

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
Bruce J. Kniffen
Hardy, Peal, Rawlings & Werner
750 Third Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MUNDY I. PEALE and BETSEY F. PEALE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967, 1968 and 1969.	:	

Petitioners, Mundy I. Peale and Betsey F. Peale, Box 654, Route 1, Laramie, Wyoming 82070, 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 1967, 1968 and 1969 (File No. 20433).

Petitioners have requested that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing.

Based on the record as it is presently constituted, the State Tax Commission makes the following decision.

ISSUES

I. Whether the payments received by petitioner Mundy I. Peale during the years in issue constitute an annuity.

II. Whether the deferred compensation received by Mr. Peale constitutes New York income derived from or connected with New York sources.

III. Whether contingent payments received by Mr. Peale are attributable to New York sources.

FINDINGS OF FACT

1. Petitioners filed nonresident New York State income tax returns for 1968 and 1969. They filed amended returns for 1967. Petitioners were New York State residents until June 17, 1967.

2. On October 26, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1967, 1968 and 1969 in the amount of \$2,579.25, including interest for 1967, 1968 and 1969 and accordingly issued a Notice of Deficiency therefor. Petitioners timely filed a petition for redetermination of said deficiency.

3. The Statement of Audit Changes provided, in part, that:

"Pursuant to Regulation 134.4(c), if personal services are performed in New York, the compensation for such services includible in Federal adjusted gross income constitutes income from New York sources regardless of the fact that such compensation is received in a taxable year after the year in which the services were performed. As deferred compensation payments received from Fairchild-Hiller Corporation constitutes contingent compensation rather than pension payments which constitute an annuity, these payments are considered compensation from New York sources and taxable to a nonresident. Therefore, the \$42,000.00 compensation payment is subject to personal income tax under the New York State Tax Law."

4. Petitioner Mundy I. Peale ("Peale"), was employed by Republic Aviation Corporation ("RAC"), in an executive capacity during 1952 through 1964. During the aforesaid years, Peale resided and was employed in the State of New York.

5. During 1952 through 1963, Peale and RAC entered into written annual employment agreements. The agreement of December 31, 1952, provided, in part, that during 1953, RAC was to deduct and withhold \$20,000.00 from any amount allocated to Peale during 1953 under the corporation's Profit Sharing Plan, or, if less than \$20,000.00 was allocated to him, that the corporation would deduct and withhold the entire amount so allocated. The agreement of November 19, 1953, in addition to the provision heretofore mentioned, also provided that RAC was to pay Peale as "contingent compensation" the sum of \$20,000.00 per year, commencing on his retirement from the corporation, for the duration of his life, provided he had attained the age of 65 and had been continuously in

the employ of the corporation. The contingent compensation was conditioned on Peale not being engaged in any business competitive with that of RAC and that Peale render consultant services as reasonably requested from time to time by RAC. The agreements were later amended in 1961 and 1963 to provide that Peale would receive the withheld payments for ten years after he ceased his employment with RAC.

6. On November 25, 1966, RAC, Fairchild-Hiller Corporation ("Fairchild") and Peale entered into a novation agreement which provided, in part, that RAC agree to pay Fairchild \$315,000.00 which the latter agreed to pay to Peale in quarterly installments of \$10,500.00 commencing March 15, 1967 and terminating June 15, 1974. The agreement further provided that Peale agree to render consultant services for Fairchild at its request as provided in the employment agreements between RAC and Peale, assigned to Fairchild.

7. Neither RAC nor Fairchild ever requested Peale to render any consulting services at any time. Peale never rendered any such consulting services.

8. During 1967, 1968 and 1969, Peale received \$42,000.00 annually from Fairchild.

9. Petitioners reported their income on an annual cash basis.

CONCLUSIONS OF LAW

A. That the payments received by Peale from Fairchild-Hiller Corporation during the years in issue did not qualify as an annuity under 20 NYCRR 131.4(d).


B. That the deferred compensation payments and the contingent compensation payments received by Peale during the years in issue were for services performed by him in New York for RAC in prior years and therefore constituted income attributable to New York sources within the intent and meaning of section 632(b)(1)(B) of the Tax Law and 20 NYCRR 131.4(c) and 20 NYCRR 131.18.


C. That the petition of Mundy I. Peale and Betsey F. Peale for the years 1967, 1968 and 1969 be and the same is hereby denied.

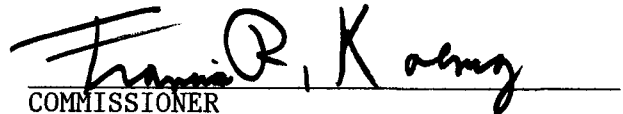
DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1980


PRESIDENT


COMMISSIONER


COMMISSIONER