

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C. Bruce and Virginia S. Pearsall	:	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	:	
1976.	:	

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon C. Bruce and Virginia S. Pearsall, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C. Bruce and Virginia S. Pearsall
39 Fairwater Ave.
Massapequa, NY 11758

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
4th day of August, 1982.





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

August 4, 1982

C. Bruce and Virginia S. Pearsall
39 Fairwater Ave.
Massapequa, NY 11758

Dear Mr. & Mrs. Pearsall:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
C. BRUCE PEARSALL and VIRGINIA S. PEARSALL
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1976.

DECISION

Petitioners, C. Bruce Pearsall and Virginia S. Pearsall, 39 Fairwater Avenue, Massapequa, New York 11758, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1976 (File No. 24668).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1981 at 9:15 A.M. Petitioner C. Bruce Pearsall appeared pro se and for his wife, petitioner Virginia S. Pearsall. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether sections 612(b)(7) and 612(b)(8) of the Tax Law are constitutional.

II. Whether sections 612(b)(7) and 612(b)(8) of the Tax Law were properly applied within legislative intent.

FINDINGS OF FACT

1. Petitioners, C. Bruce Pearsall and Virginia S. Pearsall, timely filed a joint New York State Income Tax Resident Return for the year 1976. Attached thereto was a Wage and Tax Statement, and a New York State Professional Service Corporation Information Return, both issued by "Carlino and Pearsall, P.C.".

The aforementioned information return indicated that \$7,462.00 and \$757.00 were amounts "required to be added to total Federal income" by sections 612(b)(7) and 612(b)(8), respectively, of the Tax Law. However, these amounts were not added to total Federal income on the aforementioned tax return filed for the year 1976.

2. On December 15, 1978 the Tax Compliance Bureau issued a Notice of Deficiency for the year 1976 for \$1,404.94 plus interest, along with an explanatory Statement of Audit Changes, which indicated:

"New York refund must be added at Line 11, Schedule A." This item was not challenged by petitioners.

"Section 612(b)(7) of the New York Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the excess of the amount deductible by the corporation as a contribution to certain employee plans for pensions, profit sharing, annuity and bond purchase over what would have been deductible by a self-employed individual."

"Section 612(b)(8) of the New York State Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the amount of taxes paid by the corporation for old age, survivors and disability insurance on FICA wages for the calendar year of the shareholder. This does not include payment for hospital (medicare) insurance."

3. Petitioner C. Bruce Pearsall is an attorney and a shareholder of Carlino and Pearsall, P.C., a New York professional service corporation organized under Article 15 of the Business Corporation Law.

4. The facts are not in dispute. Petitioners challenged the validity of imposition of sections 612(b)(7) and 612(b)(8) of the Tax Law by contending;

- a) That these sections of the Tax Law circumvent the purpose of Article 15 of the Business Corporation Law.
- b) That the Internal Revenue Code does not consider the items at issue as income, which is incorporated by reference pursuant to section 607 of the Tax Law.

- c) That the income at issue does not become taxable income until retirement or withdrawal at age 59½. Petitioner pointed out that he would not have control of the pension funds until retirement or withdrawal.
- d) That sections 612(b)(7) and 612(b)(8) of the Tax Law are unconstitutional since it deprives petitioner of equal protection of the Law.

CONCLUSIONS OF LAW

A. That the constitutionality of all sections of the Tax Law are presumed at the administrative level of the New York State Tax Commission, which includes its adjudicatory proceedings conducted pursuant to section 689(a) of the Tax Law and 20 NYCRR 601.

B. That regardless of the purpose of Article 15 of the Business Corporation Law, or the provisions of the Internal Revenue Code, the New York adjusted gross income of a resident individual is clearly defined by section 612(a) of the Tax Law, which specifically included the modifications of sections 612(b)(7) and 612(b)(8) of the Tax Law.

C. That sections 612(b)(7) and 612(b)(8) of the Tax Law were properly applied pursuant to the Statement of Audit Changes issued with the Notice of Deficiency of December 15, 1978.

D. That the petition of C. Bruce Pearsall and Virginia S. Pearsall is denied and the Notice of Deficiency issued December 15, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER