

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Estate of Tessie Peters :
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 :
1975 & 1976. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

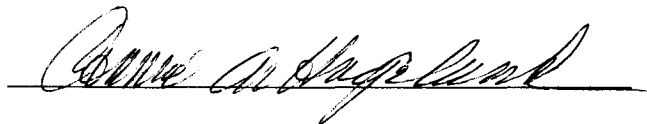
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Estate of Tessie Peters, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

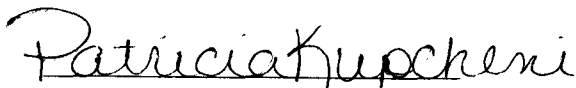
Estate of Tessie Peters
c/o Cleopatra Deones, Executrix
59 Briarcliff Rd.
Mountain Lakes, NJ 07046

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
21st day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Tessie Peters :
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 Years :
1975 & 1976. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon John B. Riordan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John B. Riordan
74 Trinity Place
New York, NY 10006

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
21st day of October, 1983.

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie Hagelund

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

October 21, 1983

Estate of Tessie Peters
c/o Cleopatra Deones, Executrix
59 Briarcliff Rd.
Mountain Lakes, NJ 07046

Dear Ms. Deones:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John B. Riordan
74 Trinity Place
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF TESSIE PETERS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioner, Estate of Tessie Peters, c/o Cleopatra Deones, 59 Briarcliff Road, Mountain Lakes, New Jersey 07046, 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 1975 and 1976 (File No. 34963).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 16, 1983 at 1:15 P.M., with all briefs to be submitted by June 6, 1983. Petitioner appeared by John B. Riordan, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the income which was derived by a nonresident from interest attributable to the installment sale of real property constituted income subject to New York State personal income tax.

FINDINGS OF FACT

1. On September 30, 1971, Tessie Peters, who was then a resident of New York, sold her interest in certain real property, i.e. a hotel, located in the City of Long Beach, New York. As part of the consideration for the sale, Ms. Peters received a mortgage note providing for monthly payments of principal

and interest until September 30, 1991. The mortgage note was secured by a subordinated purchase money mortgage on the property conveyed.

2. In October, 1974, Ms. Peters moved from her residence in New York and became a resident of Florida.

3. Ms. Peters filed a New York State Income Tax Resident Return for 1975. On this return, Ms. Peters reported the interest income arising from the sale of the real property. She also reported and paid a tax due of \$6,702.63.

4. Ms. Peters died on December 14, 1976 while a resident of Florida.

5. On September 10, 1977, the Estate of Tessie Peters ("Estate") filed an amended New York State Income Tax Nonresident Return for 1975 and a New York State Income Tax Nonresident Return for 1976. To the extent relevant herein, the amended return for 1975 did not report any interest income subject to New York State tax and claimed a refund in the amount of \$6,363.31. Similarly, the return for 1976 did not report any interest income as subject to New York State tax and claimed a refund of \$4,467.61.

6. After the filing of the returns, the Audit Division issued a Statement of Refund Adjustment for the years 1975 and 1976. To the extent at issue herein, the Statement of Refund Adjustment explained that the interest income arising from the sale of the real property was includible in petitioner's income. Accordingly, for the year 1975, the Audit Division included interest income in the amount of \$31,285.00. This resulted in a refund computed to be due by the Audit Division of \$2,850.83. For the year 1976, the Audit Division included interest income in the amount of \$28,388.00 resulting in a refund computed to be due by the Audit Division of \$1,751.88.

7. On September 13, 1978, petitioner filed Claims for Credit or Refund of Personal Income Tax and/or Unincorporated Business Income Tax in the amount of

\$3,512.11 for 1975 and in the amount of \$2,715.51 for 1976. Each claim stated, in essence, that the interest was received pursuant to a promissory note held by the taxpayer and that, since the taxpayer was a nonresident, the interest income was nontaxable.

8. On August 27, 1979, the Audit Division issued a formal Notice of Disallowance to the Estate's claim for refund in full.

CONCLUSIONS OF LAW

A. That section 632(b)(2) of the Tax Law provides that:

"Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state."

B. That the interest income received on the note arising from the sale of the real property was not income "...from property employed in a business trade, profession, or occupation carried on in this state." [Tax Law §632(b)(2)]. The interest income was attributable to the mortgage note; that Ms. Peters appears to have operated the real property as a business, i.e. a hotel, would not alter that fact (See Matter of Epstein v. State Tax Comm., 89 A.D.2d 256). Accordingly, this interest income is not subject to New York State personal income tax and the Audit Division is directed to grant petitioner's claims for refund.

C. That the petition of the Estate of Tessie Peters is granted and the Notice of Disallowance dated August 27, 1979 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 21 1983

Adeline W. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER