

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Leroy A. & Helga A. Petersen :  
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 :  
1962. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Corrected Decision by certified mail upon Leroy A. & Helga A. Petersen, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leroy A. & Helga A. Petersen  
78 W. Brother Dr.  
Greenwich, CT

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  
6th day of May, 1983.

David Parchuck

Paulie R. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Leroy A. & Helga A. Petersen :  
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 :  
1962. :  
\_\_\_\_\_

State of New York  
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Corrected Decision by certified mail upon George J. Noumair the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George J. Noumair  
Whitman & Ransom  
522 Fifth Ave.  
New York, NY 10036

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  
6th day of May, 1983.

David Parchuck

Connie A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

Leroy A. & Helga A. Petersen  
78 W. Brother Dr.  
Greenwich, CT

Dear Mr. & Mrs. Petersen:

Please take notice of the Corrected 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  
George J. Noumair  
Whitman & Ransom  
522 Fifth Ave.  
New York, NY 10036  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
LEROY A. and HELGA A. PETERSEN : CORRECTED  
for Redetermination of a Deficiency or for : DECISION  
Refund of Personal income Tax under Article 22 :  
of the Tax Law for the year 1962. :

A formal hearing was held before Alfred Rubenstein, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on August 1, 1967 at 9:30 A.M. Petitioners appeared by Hughes, Hubbard, Blair & Reed, Esqs., (John W. Fager, Esq. and William Lee Johnson, Esq., of counsel).

Whether petitioners, as nonresidents, properly reported income from New York sources.

1. The petitioners timely filed a New York State Nonresident Income Tax Return for the year 1962. The nonresidency of the petitioners is not in issue.

2. On October 11, 1965, the Income Tax Bureau issued a Notice of Deficiency for the year 1962 to the petitioners under file number 2-6765242 in the amount of \$13,059.95 plus statutory interest. The deficiency was based upon a finding by the Income Tax Bureau that amounts received by petitioner Leroy Petersen under an incentive compensation plan of Otis Elevator Company were subject to

New York State income tax and that an allocation of business income made on petitioners' return was improper.

3. The petition was timely filed.

4. During the years 1949 through 1961, LeRoy A. Petersen was employed by Otis Elevator Company. At the time of his retirement, Mr. Petersen was president, chief executive officer, and a director. After retirement, he continued as a director and member of the Executive Committee and was elected chairman of the Board of Directors. The principal executive offices of the company are in New York City.

During the years 1949 through 1961 Mr. Petersen spent an average of 74.628 percent of his working days within New York State.

5. In connection with his retirement, in 1962 Mr. Petersen received \$185,877.45 from the Incentive Compensation Plan of Otis Elevator Company (as revised to January 1, 1962). This benefit was paid in cash. Additional payments under the plan were to continue for fifteen years.

6. During the year 1962, Mr. Petersen served as a director of ten corporations and received remuneration of \$50,856.00 in the form of retainer fees and fees for attendance when required. Mr. Petersen reported all of the attendance fees, but excluded half of the retainer fees on the basis that he spent no more than half of his working time in New York State during 1962 and the fact that the retainer fees were not tied to services in New York State. The retainer fees were payable, regardless of whether Mr. Petersen performed any services in New York (or for that matter, anywhere). Mr. Petersen was never called upon for consultation services other than during attendance at committee meetings or directors' meetings except for occasional telephone calls received at his home

from two such corporations, and no supporting data has been submitted in proof of any right to allocation of fees for such occasional telephone consultations.

The petitioners have failed to prove that any of Mr. Petersen's services for any of the corporations were required to be performed outside the State of New York or that any such services performed by him outside the State of New York were for other than his own convenience.

7. The Notice of Deficiency was computed in part, by allowing petitioners credit for estimated tax in the amount of \$1,240.97, as claimed on the 1962 return. Income Tax Bureau records indicate that petitioners are entitled to an additional estimated tax credit of \$454.03, which was petitioners' 1961 overpayment that was applied to their 1962 estimated tax account, but not claimed by petitioners on their return.

#### CONCLUSIONS OF LAW

A. That the payment of \$185,877.45 received by petitioner Leroy Petersen (Finding of Fact "5" supra) from the Incentive Compensation Plan of Otis Elevator Company constituted the payment of an annuity.<sup>1</sup> (See Matter of Linsley v. Gallman, 38 A.D.2d 367, aff'd. 33 N.Y.2d 863.) Therefore, said benefit is not includible in the New York income of petitioner Leroy Petersen, a nonresident individual.

B. Income in the form of director's remuneration for the year 1962 constitutes payment for services attributable entirely within the State of New York in the amount of \$50,856.00 and is subject to New York State income tax.

---

<sup>1</sup> It is noted that the year at issue is prior to the adoption of 20 NYCRR 131.4(d).


C. That the Notice of Deficiency dated October 11, 1965, issued against the petitioners is to be recomputed in accordance with Finding of Fact "7" and Conclusion of Law "A" supra.

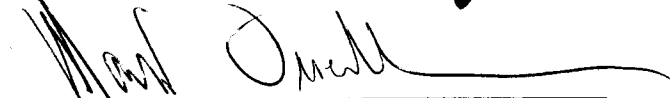
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



POSTAGE DUE EXPIRED

10/11/79

*Handwritten signature*

Leroy A. & Helga A. Petersen  
78 W. Brother Dr.  
Greenwich, CT

**CERTIFIED**

**P 481 207 733**

**MAIL**



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

May 6, 1983

Leroy A. & Helga A. Petersen  
78 W. Brother Dr.  
Greenwich, CT

Dear Mr. & Mrs. Petersen:

Please take notice of the Corrected 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  
George J. Noumair  
Whitman & Ransom  
522 Fifth Ave.  
New York, NY 10036  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
LEROY A. and HELGA A. PETERSEN : CORRECTED  
DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal income Tax under Article 22 :  
of the Tax Law for the year 1962. :

A formal hearing was held before Alfred Rubenstein, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on August 1, 1967 at 9:30 A.M. Petitioners appeared by Hughes, Hubbard, Blair & Reed, Esqs., (John W. Fager, Esq. and William Lee Johnson, Esq., of counsel).

Whether petitioners, as nonresidents, properly reported income from New York sources.

1. The petitioners timely filed a New York State Nonresident Income Tax Return for the year 1962. The nonresidency of the petitioners is not in issue.

2. On October 11, 1965, the Income Tax Bureau issued a Notice of Deficiency for the year 1962 to the petitioners under file number 2-6765242 in the amount of \$13,059.95 plus statutory interest. The deficiency was based upon a finding by the Income Tax Bureau that amounts received by petitioner Leroy Petersen under an incentive compensation plan of Otis Elevator Company were subject to

New York State income tax and that an allocation of business income made on petitioners' return was improper.

3. The petition was timely filed.

4. During the years 1949 through 1961, LeRoy A. Petersen was employed by Otis Elevator Company. At the time of his retirement, Mr. Petersen was president, chief executive officer, and a director. After retirement, he continued as a director and member of the Executive Committee and was elected chairman of the Board of Directors. The principal executive offices of the company are in New York City.

During the years 1949 through 1961 Mr. Petersen spent an average of 74.628 percent of his working days within New York State.

5. In connection with his retirement, in 1962 Mr. Petersen received \$185,877.45 from the Incentive Compensation Plan of Otis Elevator Company (as revised to January 1, 1962). This benefit was paid in cash. Additional payments under the plan were to continue for fifteen years.

6. During the year 1962, Mr. Petersen served as a director of ten corporations and received remuneration of \$50,856.00 in the form of retainer fees and fees for attendance when required. Mr. Petersen reported all of the attendance fees, but excluded half of the retainer fees on the basis that he spent no more than half of his working time in New York State during 1962 and the fact that the retainer fees were not tied to services in New York State. The retainer fees were payable, regardless of whether Mr. Petersen performed any services in New York (or for that matter, anywhere). Mr. Petersen was never called upon for consultation services other than during attendance at committee meetings or directors' meetings except for occasional telephone calls received at his home

from two such corporations, and no supporting data has been submitted in proof of any right to allocation of fees for such occasional telephone consultations.

The petitioners have failed to prove that any of Mr. Petersen's services for any of the corporations were required to be performed outside the State of New York or that any such services performed by him outside the State of New York were for other than his own convenience.

7. The Notice of Deficiency was computed in part, by allowing petitioners credit for estimated tax in the amount of \$1,240.97, as claimed on the 1962 return. Income Tax Bureau records indicate that petitioners are entitled to an additional estimated tax credit of \$454.03, which was petitioners' 1961 overpayment that was applied to their 1962 estimated tax account, but not claimed by petitioners on their return.

#### CONCLUSIONS OF LAW

A. That the payment of \$185,877.45 received by petitioner Leroy Petersen (Finding of Fact "5" supra) from the Incentive Compensation Plan of Otis Elevator Company constituted the payment of an annuity.<sup>1</sup> (See Matter of Linsley v. Gallman, 38 A.D.2d 367, aff'd. 33 N.Y.2d 863.) Therefore, said benefit is not includible in the New York income of petitioner Leroy Petersen, a nonresident individual.

B. Income in the form of director's remuneration for the year 1962 constitutes payment for services attributable entirely within the State of New York in the amount of \$50,856.00 and is subject to New York State income tax.

---


<sup>1</sup> It is noted that the year at issue is prior to the adoption of 20 NYCRR 131.4(d).

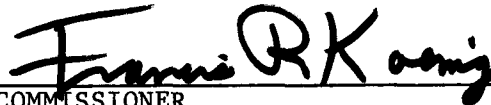
C. That the Notice of Deficiency dated October 11, 1965, issued against the petitioners is to be recomputed in accordance with Finding of Fact "7" and Conclusion of Law "A" supra.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER