In the Matter of the Petition

of

JOHN W. WIERSMA

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Unincorporated Business . Taxes under Article(s) 23 Tax Law for the (Year(s) 1963, 1964 and 1965

State of New York County of Albany

Lynn Wilson , 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 4th day of April , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN W. (representative of) the petitioner in the within WIERSMA proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. John W. Wiersma 444 Montpelier Road Herndon, Virginia 22070

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

4th day of April , 1972. Lynn Wilson

In the Matter of the Petition

of

JOHN W. WIERSMA

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Unincorporated Business Taxes under Article(s) 23 of the Tax Law for the (Year(s) 1963, 1964:

and 1965

State of New York County of Albany

, being duly sworn, deposes and says that Lvnn Wilson she is an employee of the Department of Taxation and Finance, over 18 years of , 19 72, she served the within age, and that on the 4th day of April Notice of Decision (or Determination) by (certified) mail upon VITALY M. (representative of) the petitioner in the within GOTTLIEB, C.P.A. proceeding, by enclosing a true copy thereof in a securely sealed postpaid Vitaly M. Gottlieb, C.P.A. Grossman, Brozman & Agrin wrapper addressed as follows: Two Pennsylvania Plaza 10001 New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

4th day of April

. 19 72

Lynn Wilson



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION HEARING UNIT

> EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

DATED:

Albany, New York
April 4, 1972

Nr. John W. Wiersma 444 Montpelier Road Herndon, Virginia 22070

Dear Mr. Wiersma:

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

οf

Please take further notice that pursuant to section(s)

722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within 4 months after the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours

Hearing Officer

cc Petitioner's Representative Law Bureau STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN W. WIERSMA

DECISION

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for Redetermination of Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1963, 1964 and 1965.

Petitioner, John W. Wiersma, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965.

(File No. 39286904). A formal hearing was scheduled before Paul B.

Coburn, Hearing Officer, at the offices of the State Tax Commission,

80 Centre Street, New York, New York for October 22, 1971, at

10:30 A.M. Petitioner's representative, Vitaly M. Gottlieb, C.P.A.,

advised the State Tax Commission in writing on October 4, 1971, that

petitioner wished to waive a formal hearing and submit the case to

the State Tax Commission on the entire record contained in the file.

The State Tax Commission renders the following decision after due

consideration of said record.

ISSUE

Did petitioner, John W. Wiersma's activities as a travel industry and management consultant during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, John W. Wiersma, and his wife filed New York State income tax resident returns for the years 1963 and 1964 and for the period from January 1, 1965 through September 30, 1965.

He did not file New York State unincorporated business tax returns for said years.

- 2. On May 1, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John W. Wiersma, imposing unincorporated business tax upon the income received by him as a consultant during the years 1963 and 1964 and the period from January 1, 1965 through September 30, 1965, and accordingly issued a Notice of Deficiency in the sum of \$1,877.92.
- Petitioner, John W. Wiersma, was a travel industry and management consultant during the years 1963, 1964 and 1965. received fees from three firms during the year 1963, from four firms during the year 1964 and from nine firms during the period from January 1, 1965 through September 30, 1965. He was also a student at Columbia University under a Ford Foundation fellowship during these years. Federal and New York State income taxes and social security tax were not deducted from the compensation paid to him. He filed Schedule "C's" wherein he stated that his principal business activity was travel industry consultant and management consultant. He deducted business expenses, stationery, printing, office and other miscellaneous expenses on said schedules. He conducted his business activities from his home at 280 Riverside Drive in New York City. He has failed to prove that the firms from whom he received compensation exercised any control or supervision with respect to the time, manner and means of his carrying out his consulting activities.

CONCLUSIONS OF LAW

- A. That the income received by petitioner, John W. Wiersma, during the years 1963 and 1964 and the period from January 1, 1965 through September 30, 1965 from the firms that he represented constituted receipts from his regular business as a travel industry and management consultant and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.
- B. That the aforesaid activities of petitioner, John W. Wiersma, during the aforesaid years constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.
- C. That the petition of John W. Wiersma is denied and the Notice of Deficiency issued May 1, 1967, is sustained.

DATED: Albany, New York

april 4, 1972.

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

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Department of Taxation and Finance STATE OF NEW YORK

ALBANY, N. Y. 12227 STATE CAMPUS

Mr. John W. Wiersma 444 Montpelier Road

22070

Herndon, Virginia

No. 592504



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION HEARING UNIT

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

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A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS ALBANY, N. Y. 12227

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Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very Kruly yours

Paul B. Coburn

Hearing Officer

cc Petitioner's Representative Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

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The State Tax Commission renders the following decision after due
consideration of said record.

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- 3. Petitioner, John W. Wiersma, was a travel industry and management consultant during the years 1963, 1964 and 1965. He received fees from three firms during the year 1963, from four firms during the year 1964 and from nine firms during the period from January 1, 1965 through September 30, 1965. He was also student at Columbia University under a Ford Foundation fellowship during these years. Federal and New York State income taxes and social security tax were not deducted from the compensation paid to him. He filed Schedule "C's" wherein he stated that his principal business activity was travel industry consultant and management consultant. He deducted business expenses, stationery, printing, office and other miscellaneous expenses on said schedules. He conducted his business activities from his home at 280 Riverside Drive in New York City. He has failed to prove that the firms from whom he received compensation exercised any control or supervision with respect to the time, manner and means of his carrying out his consulting activities.

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- C. That the petition of John W. Wiersma is denied and the Notice of Deficiency issued May 1, 1967, is sustained.

DATED: Albany, New York

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STATE TAX COMMISSION

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