

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY T. WHITLEY

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) 1968 & 1969. :

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

State of New York
County of Albany

Martha Funaro, 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 6th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Frank C.

Roehl, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Frank C. Roehl, C.P.A.
855 Avenue of Americas
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

6th day of February, 1974.

[Signature]
James S. Day, Attorney

[Signature]
Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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age, and that on the 6th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harry T.

Whitley (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Harry T. Whitley
200 Clark Avenue
Palm Beach, Florida 33480

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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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

6th day of February, 1974

Joyce A. VanAllen

Martha Funaro



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

• HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino

~~XXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 6, 1974

Mr. Harry T. Whitley
200 Clark Avenue
Palm Beach, Florida 33480

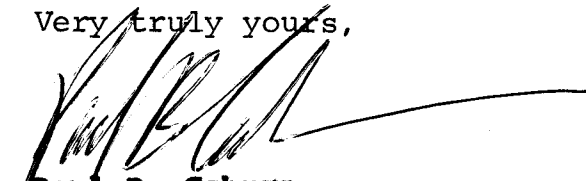
Dear Mr. Whitley:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,



Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARRY T. WHITLEY	:	
	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968 and 1969.	:	
	:	

Petitioner, Harry T. Whitley, 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 1968 and 1969. (File No. 9-48321249.)

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 17, 1973, at 11:00 A.M. Petitioner appeared by Frank C. Roehl, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUES

I. Did petitioner, Harry T. Whitley's activities as a management consultant during the years 1968 and 1969 constitute the practice of a profession?

II. If petitioner, Harry T. Whitley, was carrying on an unincorporated business during the years 1968 and 1969, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioner, Harry T. Whitley, and his wife filed New York State combined resident income tax returns for the years 1968 and 1969. He listed his occupation as "consultant" on said returns. He did not file New York State unincorporated business tax returns for said years at the time of filing said returns.

2. On April 28, 1972, petitioner, Harry T. Whitley, filed New York State unincorporated business tax returns for the years 1968 and 1969. He stated on said returns that he was a "management consultant", that he was not subject to the unincorporated business tax, and that the amount of said tax due for said years was "none".

3. On January 31, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harry T. Whitley, imposing unincorporated business tax in the sum of \$1,662.10 upon the income received by him as a management consultant during the years 1968 and 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,912.75.

4. Petitioner, Harry T. Whitley, was a management consultant during the years 1968 and 1969. He made studies for and gave advice to corporations, principally in the areas of mergers and acquisitions. He was paid on a contingency fee basis based upon the results achieved in bringing about a merger or acquisition for a corporate client.

5. In 1968 petitioner, Harry T. Whitley's entire gross receipts from his management consultant activities consisted of one fee in the sum of \$43,680.00 paid by Dayco Corporation in connection with the acquisition by Dayco Corporation of R.M. Hollingshead Company. Dayco Corporation was located in Dayton, Ohio. R.M. Hollingshead Company was located in Camden, New Jersey. None of the services rendered in connection with the earning of this fee were rendered in New York State.

6. In 1969 petitioner, Harry T. Whitley's entire gross receipts from his management consultant activities consisted of one fee in the sum of \$32,500.00 paid by Ecological Science Corporation of Miami, Florida. All of his services rendered in connection with the earning of this fee were rendered in the State of Florida.

7. During the years 1968 and 1969, petitioner, Harry T. Whitley, owned a cooperative apartment located at 133 East 80th Street, New York, New York. It consisted of seven rooms and a terrace. In 1970 he sold the apartment and moved to Florida full time. None of the rooms in the home were physically set up as an office. During said years, he also owned a thirteen-room home in Palm Beach, Florida. He maintained one room in this home as an office. It consisted of a desk for himself, a desk for a part-time secretary, files, financial publications, a typewriter and miscellaneous office supplies and equipment. He conducted his management consultant business from both

locations. He divided his time approximately equally between both locations.

8. Petitioner, Harry T. Whitley, graduated from Tulane University Business School. He had done graduate work in finance, accounting and business law at Columbia University. He is a member of the Council of the Graduate School of Business of Tulane University. From 1946 to 1949 he headed the administrative services department of Arthur Anderson & Company, a large public accounting firm.

9. During the years 1968 and 1969, petitioner, Harry T. Whitley's income as a management consultant was derived solely from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Harry T. Whitley, as a management consultant during the years 1968 and 1969, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner, Harry T. Whitley's office in his home in Florida constituted a regular place of business outside of New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That since petitioner, Harry T. Whitley, carried on his business as a management consultant within and without New

York State and since he maintained a regular place of business outside of New York State, therefore a fair and equitable allocation of his unincorporated business net income must be made in accordance with the meaning and intent of section 707(a) of the Tax Law.

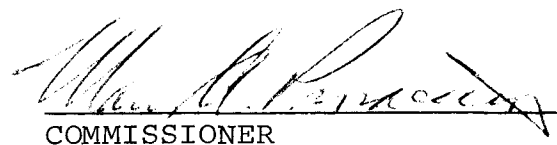
D. That an allocation of 50% of petitioner, Harry T. Whitley's net unincorporated business income for the years 1968 and 1969 to New York State constitutes a fair and equitable allocation of said income in accordance with the meaning and intent of section 707(d) of the Tax Law and 20 NYCRR 287.1 q.77, since he divided his time approximately equally between New York and Florida. The allocation formulas set forth in sections 707(b) and 707(c) of the Tax Law are not applicable since he did not submit books, records and other evidence that would permit the use of said formulas.


E. That the petition of Harry T. Whitley is granted to the extent of reducing unincorporated business income allocable to New York State for the year 1968 from \$31,744.73 to \$15,872.37 and for the year 1969 from \$16,844.11 to \$8,422.06; of reducing unincorporated business taxable income for the year 1968 from \$21,744.73 to \$7,697.90, and for the year 1969 from \$8,475.29 to \$1,737.65; of reducing unincorporated business tax due for the year 1968 from \$1,195.96 to \$423.38, and for the year 1969 from \$466.14 to \$0.00 together with such interest as may be

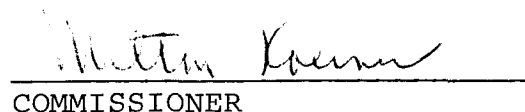
lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 31, 1972; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 6, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER